

Collector of Central Excise Vs. Multiple Fabrics Co. (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-24-1983

Reported in : (1984)(16)ELT299TriDel

Appellant : Collector of Central Excise

Respondent : Multiple Fabrics Co. (P) Ltd.

Judgement :

1. These are two appeals filed by the Collector of Central Excise, Calcutta, against the combined Order-in-Appeal No. 6-622/Cal/82 dated 20-8-82 passed by the Collector of Central Excise (Appeals), Calcutta, in which he had allowed two appeals of the respondents, holding that the goods manufactured by them (conveyor belting) were correctly classifiable under Item 68 of the Central Excise Tariff and not under Item 22 as held by the Assistant Collector.

2. These appeals first came up for hearing on 10-10-83, alongwith the appeal filed by M/s Multiple Fabrics Co. (P) Ltd. (the respondents in the present matter) against an order passed by the Collector of Central Excise, Calcutta vide Order-in-Original No. 203(22) 80/Collector-16/83 dated 1-2-83. At the request of the respondents in these cases, the hearing was adjourned to enable them to file cross-objections. It was also brought to the notice of Shri Tayal, Departmental Representative, that the two appeals appeared to have been filed after the period of limitation prescribed in Section 35B (3), of the Central Excises and Salt Act, and he was directed to be prepared to argue this point when the matters came up for hearing.

3. These two appeals came up on 24-11-83 and were taken up for hearing immediately after the conclusion of the hearing in the appeal filed by the present respondents. Shri Tayal then made his submissions regarding condonation of delay in filing the appeal. He submitted that the appeals had originally been sent to the Tribunal's office by hand of pilot on 1-3-83 [that is, within the time limit as extended by the Customs, Central Excise and Gold (Control) Removal of Difficulties Order, 1982 dated 11-10-82]. However, the papers had apparently been lost in transit and accordingly the appeal dated 26-9-83 had been filed again, together with an application for condonation of delay. Shri Tayal prayed that in these circumstances the appeals should be admitted.

4. Shri R.N. Banerjee for the respondents opposed the admission of the appeals. He suggested that the reason given on behalf of the appellant, namely loss of the documents in transit, should not be accepted as it was not fully established by evidence. Apart from this, he made another submission which was not quite clear to us. He appeared to suggest that, just as the provisions of Section 35F, relating to pre-deposit of duty demanded or penalty levied, were applied against the appellant when he was an assessee, a similar condition should be applied against the Department when the latter was the appellant. According to Shri Banerjee, a certain amount was due to the respondents as refund arising out of the orders under appeal. Since the Department had not approached the Tribunal for a stay in this regard, their appeals should not be admitted.

5. We pointed out to Shri Banerjee that Section 35F did not appear to apply when the appeal was made on behalf of the Department. The section itself refers to "any duty demanded in respect of goods which are not under the control of central excise authorities or any penalty levied under this Act". There is no question of any penalty under the Act or the Rules having been levied on the central excise authorities, nor of any duty being "demanded" from them. Again, the section goes on to direct that the amounts in question should be deposited with the adjudicating authority. When the adjudicating authority himself is a part of the department, it would appear pointless to require the department itself in the person of the adjudicating authority. Thus, Section 35F did not appear to be applicable to the present case.

6. Having regard to the position explained above, Shri Banerjee did not press his objections, except for the objection that the delay in filing the appeal had not been satisfactorily accounted for. So far as this point is concerned, Shri Tayal, the learned SDR, made a statement from the Bar testifying to the correctness of the facts. He stated inter alia that he had received a telex message sent on or about 1-3-1983 to the effect that the appeal papers had been sent by hand of pilot and it was because he found that these papers had not been received that he caused further enquiries to be made and ultimately fresh appeals were filed since the original appeals could not be traced. We accept this statement of Shri Tayal made from the Bar. Being satisfied that there was sufficient cause for not presenting the appeals within the prescribed period, we admit these two appeals.

7. As regards the merits of the matters under appeal, both sides have agreed that they have been fully covered in the hearing in appeal No ED (SB) 1255/83-D heard on 24-11-83, relating to an appeal filed by the respondents in this case, M/s Multiple Fabrics Co. (P) Ltd., against the appellant in this case, namely the Collector of Central Excise, Calcutta. The manufacturer is the same, the product is the same and the question for consideration is also the same, namely, whether the product was classifiable under Item 22(3) or under Item 68 of the Central Excise Tariff. Both sides therefore adopted the arguments respectively advanced by them in appeal No. ED (SB) 1255/83-D.8. In Order No. 745/1983-D dated 24-11-1983, we have considered this issue in detail and have held that the goods in question were correctly classifiable under Item 68. Following our decision in that case, we hold that the decisions of the Collector (Appeals) in the two orders which are the subject matters of the present appeals were correct. We accordingly confirm the two orders of the Collector (Appeals) and reject the two appeals filed by the Collector of Central Excise, Calcutta, against them.

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