

Vikram Cement and anr. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-29-1992

Reported in : (1993)(44)LC90Tri(Delhi)

Judge : G Agarwal, B T N.K.

Appellant : Vikram Cement and anr.

Respondent : Collector of Central Excise

Judgement :

1. These two stay applications are directed against the same order and were heard together. They are, therefore, being disposed of by a common Order.

2. Briefly stated, the facts are that the two applicants herein have been licensed separately under the Central Excise Rules 1944 for manufacturing the cement which is an excisable commodity under Chapter 25 of the Central Excise Tariff Act, 1985. The supporting raw material for manufacture of cement is limestone which they obtain from the mines which is crushed and thereafter, passed through various stages when clinker emerges before cement is produced. It was alleged in the Show Cause Notice issued to two applicants that they had removed certain quantities of crushed limestone to the other unit without payment of duty thereby suppressing the production and removal of crushed limestone from the authorities. Both the manufacturers were availing of exemption under Notification No. 448/86-CE, dated 13.11.1988 which is as under: In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government

hereby exempts limestone, in any form, falling under sub-heading No. 2505.00 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from the whole of the duty of excise leviable thereon which is specified in the said Schedule: Provided that such limestone is used within the factory of production for the manufacture of cement clinkers and cement.

3. The applicants defence before the Collector was that crushing of limestone does not amount to manufacture under Section 2(0) of the Central Excises and Salt Act, 1944 for this process does not bring into existence a new commodity. They placed reliance on a decision of the Tribunal in the case of SAIL v. Collector of Central Excise . They also placed reliance on several other decisions which have been cited in the impugned Order. They also contested the demand for duty for the extended period on the ground that both the units have been operating with the knowledge of the Department for several years and there was no clandestine removal of crushed limestone. The Collector, after considering their representation as well as after hearing them, passed an Order demanding duty of Rs. 11,72,539.10 and Rs. 9,63,833.89 from M/s. Vikram Cement Co. and M/s.

New Vikram Cement Co. respectively. He also imposed a penalty of Rs. 2 lakhs and Rs. 1.5 lakhs on the two Companies respectively. The Order of the Collector has been challenged in the appeals filed before the Tribunal and two applications for stay of recovery of the amounts of duty and penalty have also been filed.

Arguing for both the applicants, Shri N. Ramanathan, learned Consultant submitted that the matter was fully covered by the decision of the Tribunal in the case of SAIL v. Collector of Central Excise (supra) in which it was held that making of fine lime from lime did not amount to 'manufacture' as understood under the Central Excise Act as well as the Central Excise Tariff Act. This being so, no duty liability was attracted after crushed limestone came into existence and, since the owners of both the units were the same namely M/s. Grasim Industries Ltd., it could not be said that they were not entitled to exemption from duty on crushed limestone under Notification No. 448/86-CE, dated 13.11.1986. He also contested the demand of duty for the extended period on the ground that the ingredients mentioned in the proviso to Section 11A of the Central Excises and Salt Act, 1944

were not in existence in the two cases. He reiterated his reliance on the case law cited before the Collector.

4. SmL A. Ray, learned SDR submitted that the question to be decided in this case was the applicability of Notification No. 448/86-CE under which exemption to limestone, in any form, was available provided that such limestone is used within the factory of production for the manufacture of cement clinkers and cement. She submitted that the two units were holders of two separate Central Excise licences and it cannot, therefore, be said that the crushed limestone sent from one of the units to the other, was used "within the factory of production".

She submitted that in view of this, the units were not entitled to the aforesaid exemption. She countered the arguments of the learned Consultant about the decision of the Tribunal in the case of SAIL v. Collector of Central Excise (supra) and later informed that an appeal against the decision of the Tribunal in the case of SAIL v. C.C.E.(supra) had been filed in the Supreme Court. She referred to another decision of the Tribunal in the case of Ajanta Marble & Chemical Industries v. Collector of Central Excise submitted that the decision of the Tribunal in the case of SAIL is dated 6.2.1991 whereas the decision in the Ajanta Marble & Chemical Industries case is dated 21.12.1990 but, the latter decision was not cited when the case of SAIL was heard. In view of two different decisions, only one of which is being relied upon by the applicants, it would not be correct to say that they are fully covered. She also submitted that Note (2) of Chapter 25 of the Central Excise Tariff Act itself defines "manufacture".

5. Referring to the question of limitation of time for the demand of duty, learned SDR submitted that none of the applicants had followed the Central Excises procedure in the movement of crushed limestone from one factory to another. She cited the decision of the Tribunal in the case of Vishwakarma Steel Industries, Ahmedabad and Anr. v. Collector of Central Excise, Ahmedabad in which it was decided that in a case of manufacture of excisable goods undertaken without obtaining Central Excise licence and without filing the classification list, the extended time limit provided under Section 11A was fully applicable. She, accordingly, submitted that the Order passed by the Collector was validly made.

She also submitted that since the applicants did not plead any financial hardship, and the Department has a strong prima facie case as explained in her submissions, both the applications for stay should be rejected.

6. Replying, Shri Ramanathan, learned Consultant, submitted that they were fully covered by the decision of the Tribunal in the case of SAIL v. Collector of Central Excise (supra) and he would like to rely on it.

He also submitted that so far as the time limit was concerned, he would reiterate the case law cited before the Adjudicating authority. He added that in view of his submissions, it was not a case for imposition of penalty.

7. We have carefully considered the stay applications and submissions of both sides. We observe that the point at issue is eligibility of the applicants to exemption under Notification No. 448/86-CE, dated 13.11.1986 by which limestone in anv form falling under sub-heading 25.05 is exempt from duty provided it is used within the factory of production in the manufacture of cement clinkers and cement. Although during the hearing, Shri Ramanathan had mentioned that both the units were owned by M/s. Grasim Industries Ltd., the facts material for our consideration are not their ownership but the fact that they hold separate Central Excise licences. It will be clearly seen that once crushed limestone is not used within the factory of production, it is not eligible to be exempt under Notification No. 448/86-CE. Two decisions of the Tribunal have been cited before us--one by each side.

While it has been held in the case of SAIL (supra) that crushing of limestone into lime fine does not amount to manufacture, in the case of Ajanta Marble (supra), the tribunal decided that crushing, grinding and seiving of limestone to obtain limestone chips and powder did amount to manufacture under Section 2(f) and Note (2) to Chapter 25 of the Schedule to the Central Excise Tariff Act. Notification No. 448/86 which exempts limestone used in the manufacture of cement clinkers and cement was not the subject matter of consideration of the Tribunal in anv of these cases. The first case related to crushing of limestone for making 'fine lime' required for making sinter. The second case related to making of limestone chips and powder by grinding and seiving of limestone received from the quarries and

the question arose in the context of eligibility to exemption under Notification No. 23/55 which exempts certain specified minerals employed as extenders, suspending agents or fillers or as diluents, and, limestone figures in this notification as one of the minerals. Thus, it is evident that none of the two decisions is relevant in the context of eligibility of exemption under Notification No. 448/86 which relates to the cement industry.

8. As far as the question of application of time bar is concerned, Shri Ramanathan had submitted that at least from 1.3.1988 onwards, there was no suppression because classification lists showing crushed limestone were filed. The learned SDR had on the other hand, submitted that the allegation in the Show Cause Notice was that the production as well as removal of crushed limestone had been suppressed from the department and even if the Classification Lists were to be taken into account, it cannot be denied that the removal of crushed limestone from the factory of production was without the knowledge of the authorities. Since exemption from duty under Notification 448/86 was available only when the crushed limestone was used within the factory of production, its removal to another factory, not being within the knowledge of the authorities, the charge of removal without payment of duty had been established and the Collector had recorded a valid finding on this aspect. It appears to us, prima facie, that this view has correctly been arrived at.

9. In view of the foregoing, we are satisfied that the applicants have not made out a prima facie case of dispensing with the requirement of pre-deposit of duty under Section 35-F of the Central Excises and Salt Act, 1944. We, therefore, reject both the applications and direct that the duty demanded from both the applicants should be deposited by 15th March, 1992. Upon deposit of the amounts of duty, the requirement of pre-deposit of the amounts of penalty imposed on the two applicants shall be deemed to have been waived under Section 35F of the Central Excises and Salt Act. This matter should come up for reporting compliance of this Order on the 23rd March, 1992.

10. Before we part, it is necessary for us to say that the Collector who decided this matter did not have the freedom to differ with the decision of the Tribunal as a part

of his judicial discipline. The Hon'ble Supreme Court have, in their judgment in the case of Union of India v. Kamalakshi Finance Corporation Ltd. , observed that the Departmental Authorities have to abide by the orders of the Tribunal and cannot by-pass them. To quote: The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the.

subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department--in itself an objectionable phrase--and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws.

11. The Supreme Court had occasion to express their displeasure on the conduct of Assistant Collectors whereas, we observe that even a senior officer of the rank of Collector has disregarded the judicial discipline which he is expected to abide by. We hope that this is only a stray case and the Collector concerned will make a note of our observations. A copy of this Order may be sent to him for this purpose.

12. A copy may also be sent to the learned Member Incharge of Legal and Judicial matters in the Central Board of Excise and Customs.

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