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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-11-1992

Reported in : (1992)(43)LC68Tri(Delhi)

Judge : S Kalyanam, V T K.S., S Peeran

Appellant : Amalgamated Industries and anr.

Respondent : Collector of Central Excise

Judgement :

1. Since we propose to dispose of the appeals themselves today on a question of law, we grant waiver of pre-deposit of duty pending disposal of appeals.
2. The appeals are directed against the common impugned order of the Collector of Central Excise (Appeals) Ahmedabad dt. 30.9.1991 confirming the order of the Asstt. Collector of Central Excise, Ahmedabad dt. 16.4.1991.
3. Shri Paresh Dave, Advocate for the appellants contended that the duty has been levied in respect of HDPE bags manufactured by the appellants and cleared for the period March 1988 to March 1990 denying the appellants the benefit of Central Excise Notification No. 175/86 dt. 1.3.1990 (sic) as amended. The learned Counsel at the outset contended that the original authority proceeded on the basis that the suppliers of the raw materials namely, M/s Associated Cement Co. Ltd. (ii) M/s Priyanka Carbon and Chemical Industries Ltd. (iii) M/s Gujarat State Fertilizers Company Ltd. are the manufacturers in terms of Section 2-F of the Central

Excises and Salt Act, 1944. On the other hand the Appellate Authority under the impugned order held in favour of the appellant that the suppliers of the raw materials are not the manufacturers but it is only the appellants who are manufacturer but erroneously held that the appellants would not be entitled to the benefit of notification No. 175/86 in terms of para-7 of the said notification inasmuch as the goods manufactured by the appellants contain the brand name of the suppliers of the HDPE fabrics. The learned Counsel submitted that there was absolutely no allegation with reference to brand name either in the show cause notice nor was any discussion or consideration in this regard in the orders passed by the original authority and therefore, the lower appellate authority erred in not confining himself only to the correctness of the order passed by the original authority and by taking up a new point against the appellant. The learned Counsel further submitted that the appellants do not have any printing facility at all and as a matter of fact the appellants never manufactured the goods in question with any brand name of the so called suppliers as held by the lower appellate authority. It was submitted that the appellant should have been put on notice by the lower authority if he were to take the view against the appellant in this connection on a question of brand name under the said notification. The learned Counsel further submitted that the samples produced by the appellants before the lower appellate authority were not manufactured by appellants but were only supplied for purposes of specifications. Finally, the learned Counsel submitted that the issue is longer (sic) *res Integra* and has been decided in favour of the appellants by the Madhya Pradesh High Court in the case of *Rajpack Well Ltd. v. UOI* .

4. Smt. JMS Sundaram, learned SDR contended that the crux of the allegation against the appellant in the show cause notice was that the appellants was not entitled to the benefit of the notification in question and it is only this question that has been discussed by the appellate authority in the impugned order holding that the appellants are not entitled to the benefit of the said notification by reason of having manufactured the goods with the brand name of the suppliers of HDPE fabrics. The learned SDR further urged that no prejudice is caused to the appellants by this finding of the appellate authority more particularly in the context of the factual background that the appellants themselves produced samples before him containing the brand name of the suppliers of HDPE fabrics. However, learned

SDR fairly conceded that if the Tribunal feels opportunity should be given to the appellants she has no objection if the matter is remanded in the interests of justice.

5. We have carefully considered the submissions made before us. On going through the records we find that the issue with reference to brand name has not been specifically set out in the show cause notice.

The question as to whether the appellants manufacture and clear the goods with the brand names of the suppliers of IIDPE fabrics is a question of fact since this question has not been specifically mentioned in the show cause notice though found against the appellant by the appellate authority on the basis of the samples produced by the appellants, we are inclined to think that the matter should be remanded to the original authority for reconsideration of the issue in accordance with law.

6. In respect of the ruling of Madhya Pradesh High Court, the learned SDR submitted that an appeal has already been filed in the Supreme Court against the same by the Department. Therefore, without expressing any opinion on the merits of the issue, we set aside the impugned order and remand the matter to the original authority for reconsideration of the matter afresh in accordance with the law after affording the appellants a reasonable opportunity of being heard. It is also open to the appellants to put forth all the pleas open to him under law including the interpretation of para 7 of the Notification in question.

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