

Award Packaging Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-14-1994

Reported in : (1994)(71)ELT51TriDel

Appellant : Award Packaging

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal against the order dated 11-2-1988 passed by the Collector, Central Excise (Appeals) Bombay. Briefly stated the facts of the case are that the appellants who are engaged in the manufacture of printed cartons falling under Item 17(3) of the erstwhile Central Excise Tariff filed a classification list in respect of "Printed Mill Board, Boxes and Printed Mill Board Cartons" and claimed exemption of these products from payment of duty under Notification No. 279/82 read with Notification No. 48/83 dated 1-3-1983. The samples of the appellants' products were drawn for test by the Deputy Chief Chemist.

In his report dated 11-9-1984 the Deputy Chief Chemist stated that the sample was in the form of Grey Board printed on one side. The appellants were served with a show cause notice dated 31-5-1985 demanding duty amounting to Rs. 13,473.25 on the cartons cleared during the period February, 1985 and March, 1985 on the grounds that the cartons in question being made of Grey Board instead of Mill Board were not eligible for exemption under Notification No. 279/82 dated 22-11-1982. Vide their reply dated 8-7-1985, the appellants contested the demand on the grounds that the test report dated 11-9-1984 on the basis of which

the notice was issued was not furnished to them.

However, in his order dated 8-4-1986, the Assistant Collector observed that the relevant test report though not furnished to the appellants was reproduced in the show cause notice and confirmed the demand. The appeal preferred by the appellants against the order passed by the Assistant Collector was also rejected by the Collector (Appeals) on the following grounds :- "The Deputy Chief Chemist's report dated 11-9-1984 of the samples drawn on 24-4-1982 and the earlier report on the basis of which the earlier demand upto January, 1985 confirmed, revealed that same was Grey Board" He also held that the request by the appellant for a copy of the relevant Test Report at the time of personal hearing was beyond the period of 90 days stipulated in Rule 56(4).

2. The appellants have prayed that the Tribunal may decide the matter on the basis of the written submissions filed by them. The main point raised by the appellants in their written submissions is that the Collector (Appeals) has erred in concluding that in his earlier report as well, the Deputy Chief Chemist had reported that the appellants' product was made out of Grey Board. They have stated that in the earlier report the Deputy Chief Chemist had not said that the goods were made out of Grey Board. They have contended that Collector (Appeals) had also erred in holding that the request for the copy of the relevant Test Report was beyond the period of 90 days stipulated in Rule 56(4) since in terms of the Board's letter F. No. 7/9/68 dated 6-1-1979 the test result of the sample drawn by the Department was to be specifically communicated to them. They have added that the Department had taken 262 days to issue the show cause notice after receiving the said report and in case the Test Report had been communicated to them earlier, they could have exercised their right to have the goods retested. They have argued that the relevant Test Report not having been communicated to them at any stage, the question of applying the time limit under Rule 56(4) could not arise.

3. On behalf of the respondents, Shri Somesh Arora, Learned JDR reiterated the findings of the Collector (Appeals).

4. We have examined the records of the case. The demand of Rs. 13,474.25 was confirmed on the grounds that in respect of the printed cartons manufactured by

the appellants they were not entitled to the benefit of Notification No. 44/83 dated 1-3-1983 since the goods were found on test to have been made out of Grey Board and not Mill Board.

In the impugned order, the Collector (Appeals) has held that the Deputy Chief Chemist's report dated 11-9-1984 in respect of the sample drawn on 24-4-1982 and the earlier report on the basis of which an earlier demand upto January, 1985 was confirmed had revealed that the appellants' products were made out of grey board and on the basis of these tests the Assistant Collector had raised the demand even in respect of clearances for the subsequent period, i.e., February, 1985 and March 1985. As regards the appellants' contention that the result of the test report dated 11-9-1984 was not communicated to them, the Collector (Appeals) has observed that it was incorporated in the show cause notice dated 31-5-1985 and the appellants had come up with the request for retest for the first time on 5-9-1985 at the time of personal hearing before him i.e., after the prescribed period of 90 days stipulated in Rule 56(4) from 3-6-1985 the date on which they received the show cause notice. The Collector (Appeals) has held that under these circumstances, the Assistant Collector was justified in not acceding to the appellants' request for retest of the sample. The appellants have pointed out that the earlier report of the Deputy Chief Chemist, referred to by the Collector (Appeals), did not point out that the appellants' product was made out of grey board. They have further contended that the Assistant Collector's action in not furnishing the copy of the Deputy Chief Chemist's report dated 11-9-1984 in respect of the sample drawn on 24-4-1982 immediately after the receipt of the report was in violation of the Board's letter F. No. 7/9/68 dated 6-1-1979 and they were on this account prevented from asking for retest of the sample within the period of 90 days stipulated in Rule 56(4).

They have argued that the communication of the test report dated 11-9-1984 of the Deputy Chief Chemist by reproducing it in the show cause notice which was issued 262 days after the receipt of the said report was irregular and prevented them from exercising their right to seek retest of the goods within a period of 90 days stipulated in Rule 56(4). We are inclined to agree with the appellants that the failure on the part of the Department to furnish to the appellants a copy of the

report of the Deputy Chief Chemist dated 11-9-1984, shortly after it was received, prevented the appellants from exercising their right to seek retest of the goods within the period of 90 days stipulated in Rule 56(4). It is seen that in the case of *Lakhanpal National Ltd. v. Collector of Central Excise* reported in 1987 (32) E.L.T. 797, the Tribunal has held that non-disclosure of the test report to the assessee amounts to denial of proper opportunity to put forth their case. It is also seen that in the case of *Shri Ganesh Dyeing and Textile Processing Company v. Collector of Central Excise* reported in 1986 (23) E.L.T. 257, the Tribunal has held that the failure to furnish the test report even when asked for by the appellants amounts to violation of the principles of natural justice. Para 5 of the said decision, being relevant, is reproduced below :- "5. However, we find force in the first plea of the appellants. They have been consistently agitating before the Collector, the Board and now before us that the test report and traders' statements in respect of the goods seized at Ahmedabad should be disclosed to them. The existence of such test report and such statements have not been denied by the department. We specifically directed that the case records be produced before us to verify the facts but this has not been done in spite of sufficient time given. The said test report and the statements may not have been relied upon by the department but if the appellants feel that these documents are vital for their defence, they become relevant evidence for the case and if the department keeps them back, it would amount to violation of principles of natural justice. From the proceedings we find that such violation of principles of natural justice has taken place in respect of the fabrics seized at the premises of M/s. Raj Kumar & Co. of Ahmedabad. Although the quantity so seized is insignificant as compared to the overall quantity involved in the Surat seizures and stock shortages, that, in our view, cannot be a ground for glossing over the matter." 5. On the ratio of the decision cited above, we hold that the failure on the part of the Department to furnish to the appellant a copy of the test report dated 11-9-1984 of the Deputy Chief Chemist, shortly after it was received, was violative of the principles of natural justice.

6. In view of the above discussion, we set aside the impugned order and allow the appeal with consequential relief to the appellants.