

B.P.L. Electronics Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-09-1994

Reported in : (1994)LC563Tri(Delhi)

Appellant : B.P.L. Electronics Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This appeal is directed against the order passed by Collector (Appeals), Bangalore. By this order the Id. Collector has confirmed demand of excise duty of Rs. 54,86,715 /- in respect of 41 Nos. of Moulds and sold the same under the sub-heading No. 8480.00 of Central Excise Tariff Act, 1985 valued at Rs. 3,25,66,000/- Under Sub-section (2) of Section 3 of the Central Excises and Salt Act, 1944. Penalty of Rs. 5 lakhs under Rule 173Q(i) of Central Excise Rules, 1944 has also been imposed on the appellants.

2. The facts of the case that the appellants are engaged in manufacture of plastic injection moulds as well as plastic moulded parts for products such as television sets, radio cassette recorders, video cassette recorders etc. and possess necessary Central Excise licence/registration for manufacture of these excisable goods. They have installed in their factory highly sophisticated machinery for the manufacture of various types of automatic injection moulds. These moulds were classified under Heading 84.80 of Central Excise Tariff Act, 1985. They are used for : (a) Manufacture of plastic moulded parts required for the final products manufactured by the appellants; (b) manufacture and supply of moulds against

orders placed by customers; and (c) manufacture of moulds against the orders placed by customers for manufacturing moulded parts for them in the factory of the appellants.

It is stated by the appellants that the moulds are manufactured against the orders placed by the customers and the moulds are cleared from the factory to such customers, and the duty is paid on such moulds. It is submitted that there is no dispute in respect of moulds so manufactured and cleared on payment of duty. It is further stated by the appellant that the moulds for plastics are also exempt from the whole of the duty of excise leviable thereon if moulds manufactured in the factory are intended for use in the factory in which they are manufactured in terms of the exemption Notification No. 220/86-CE., dt.2-4-1986, as amended.

The appellants state that they were availing the said benefit in respect of moulds manufactured on their own account for producing plastic moulded parts required for their final products and also in respect of moulds manufactured against the orders placed by other parties but used within the factory for manufacture of plastic moulded parts for such customers. The dispute in this case pertains to goods manufactured on their own account, which are also utilised by them but however, in order to raise working capital through the bank or financial institutions, the appellants have entered into a leasing arrangement with a financial company, by which these moulds are sold to them but without parting with possession of the same. The question is as to whether these moulds are leased again to the appellants themselves for utilisation within their factory are entitled to the benefit of the Notification in question. It is stated that this transaction of sale is for record purpose only without appellant parting with the physical possession of the moulds but however retaining the possession of the same for utilising the same in their factory. A further question that arises for consideration in this appeal is as to whether there is removal of these moulds under Rules 9 and 49 of Central Excise Rules, 1944 by virtue of the sale to the financial institutions named above and whether on that account excise duty is leviable thereon. In other words, whether the benefit of Notification in question can be denied to the appellants by mere virtue of the appellants raising the sale invoices, in question without parting possession but by retaining their rights to utilise the same as a lessee. There is no

dispute in this appeal with regard to the said moulds not having been removed from the factory but the only ground for confirming the duty against the appellant is that the notification does not entitle them to utilise the benefit under such a transaction. The department has proceeded on the ground that there has been suppression of this transaction and hence larger period is attracted, including imposition of penalty. The allegation is that the appellants have raised gate pass for themselves and hence there is a removal of these goods. Thus disentitling them from claiming of the benefit and that they are required to pay the duty at the time of such removal.

3. The appellants have contended that the department were aware of the fact that they were indicating in the gate passes about the goods being removed from their own factory for themselves. It is their further plea that although the cost of moulds were recovered by change of ownership, but the fact remained that the moulds were utilised in the place of manufacture in the appellant's factory. They had also urged that the Notification has to be given its plain and natural meaning and nothing should be read into or added in the Notification.

4. However, the Id. Collector has negated on both the points raised by the appellants and has held that the assessee has not declared in the classification list about the "sold, moulds being retained in the factory" and, therefore, the question of extending the benefit of Notification did not arise. The Collector has held that the question of extending the benefit of Notification No. 220/86-C.E., dt. 2-4-1986 could have been examined only if such a declaration had been made. The Id. Collector has held that the department had proceeded to grant the benefit on the basis of plain reading of declaration filed by them and as they had not declared the true facts, the allegation of suppression is, therefore, attracted. The Id. Collector has observed that the correct procedure which the assessee should have followed is that they should have paid duty on the moulds when they were sold as per approved classification list and, thereafter, taken permission to retain the duty paid goods and processed them further. The Id. Collector has observed that as they had not followed such a procedure, therefore, it is incorrect on their part to claim now, on the ground that they had followed the procedure and that the department was also aware of the same. Id. Collector has further held that when the moulds

have been sold the assessee cannot claim that they had intention to use them in the factory. Once the goods were sold, the ownership and the right to deal with the goods rests with the buyers of the goods. Therefore, the Collector has observed that the assessee's intention even if there was any, is of no relevance, since they had no right over the sold goods.

He has also looked into the purchase orders and has observed that the assessee's intention to use the moulds had no relevance. The Collector observes that the purchase orders do not confer any right to retain the moulds in question, as the purchase orders carried a specific mention regarding the delivery schedule. He has observed that there is no intention indicated in the purchase orders for retaining of the moulds after manufacture by the assessee. The Ld. Collector has overruled the assessee's arguments that they had not only the intention to use the moulds but actually they were used in their factory and, therefore, they were entitled for the benefit of the Notification.

5. We have heard Id. advocate, Sh. V. Lakshmi Kumaran for the appellants and Id. S.D.R., Sh. B.K. Singh for the Revenue. The Id. advocate put forth some of the pleas raised by the appellants before us. The Id. advocate argued that the terms of the Notification did not stipulate that the moulds manufactured by them should not have been sold to a financial company, while retaining the possession for utilisation in their own factory. He submitted that the plain meaning of the Notification should be given and so long as the goods manufactured by them are utilised in their own factory, irrespective of the goods having been leased, mortgaged are sold under 'buy back scheme', yet the benefit is available to the appellants. He made further argument that "amortization cost" had already been included in the tools in respect of value of the moulds manufactured by them and, therefore, the duty on the moulds is deemed to have been discharged. He submitted that the Notification only referred to the utilisation of the goods by virtue of the possession and it did not deal about the title of the goods. So long as, there is no clearances and removal of the goods from the factory, the question of discharging duty on the goods does not arise, irrespective of the fact, as to whether there is a sale made to the financial company, for the purposes of raising funds or not. He submitted that in this case there had been simultaneous

execution of lease documents, and, that there had been no parting of possession. As there has been no removal or handing over of possession of goods to the financial company, the question of considering the goods having been cleared from factory did not arise, for the purpose of discharging the duty and no liability had been thus created. In this context, he referred to the charging Section 3 of the Central Excises and Salt Act, 1944 which did not deal about the ownership or title of the goods, but merely dealt with the removal of the goods from the factory. The Id. Counsel submitted that as there has been no removal and that the moulds had been utilised in the factory for manufacture of final goods namely tools, there is thus no paying duty and the Notification squarely applies. In support of his contention he relied on the following rulings :Hardilla Chemicals Ltd. v. Collector of Central Excise [1990 (49) E.L.T. 616]Collector of Central Excise, Guntur v. Andhra Sugar Ltd. [1988 (38) E.L.T. 564] (iii) A.I.R. 1963 Supreme Court 1760 In re., Sea Customs Act (1878), S. 20 (2).

6. Id. SDR Shri B.K. Singh arguing for the Revenue, defended the impugned order admirably. He submitted that actual removal is not necessary and mere sale itself presumes a constructive clearance and duty liability is evaded. The appellants had discharged sales tax on the sales invoices and thus the manufacture of a product has been completed and goods having coming into existence, a charge had been created. The sale being by itself a passing of rights to another individual the requirement of payment of duty has to be fulfilled. He relied on the following rulings dealing on the aspect of interpretation of the notification:The Tata Oil Mills Co. Ltd. v. C.C.E. -1989 (43) E.L.T. 183 (S.C.) 7. We have carefully considered the submissions made by both the sides and perused the impugned order and the records before us.

As is well settled, duty of excise is on manufacture and production of goods. The moment new goods known in the market come into existence, such goods become liable to duty as per Section 3 of the Central Excises and Salt Act, 1944 which reads as follows : "SECTION 3. Duties specified in the "(Schedule to the Central Excise Tariff Act, 1985) to be levied". (1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in (India) and a duty on salt

manufactured, in or imported by land into, any part of (India) as, and at the rates, set forth in the (Schedule to the Central Excise Tariff Act, 1985)".

But this collection of levy and recovery of duty is postponed till the date of actual removal. Thus, actual removal and clearance from the factory is the point when the impost and Tax is required to be discharged. Thus, the criteria of consumption of the goods for manufacture of final product, or sale or not used thereafter is therefore wholly irrelevant. The mere fact that a product is not actually sold or is saleable would not make any difference in determining the excisability of that product. This position is stated so in the case of Union Carbide Co. Ltd. v. Asstt. Collector of Central Excise and Others [1978 (2) E.L.T. (J 180)] in paras 8 & 9, which is reproduced herein below : This position is further strengthened by the ruling rendered by Hon'ble Allahabad High Court in the case of Oudh Sugar Mills Ltd. v. Union of India and Others [1982 (10) E.L.T. 937] in paras 5,23, 24 & 25 : * * * * * This is further strengthened by Hon'ble Supreme Court in the case of In re. Sea Customs Act para 25, which is noted herein below : * * * * * 8. Thus, it is a settled law, that excise duty is on manufacture and not on sale and thus the finding given by Id. Collector, that the sale invoice by itself has created a liability for sale is without any substance and against the very concept of chargeability and leviability of excise duty as laid down in the charging Section 3 of Central Excises & Salt Act, 1944.

9. The goods in this case have admittedly not been removed or cleared from the factory and it is also not disputed that the moulds were intended for utilisation in the further production of excisable goods.

As per Rules 9 and 49, the fact of its utilisation in the manufacture of the final goods, is itself a removal, and thus a manufacturer is surely liable to discharge the duty, irrespective of the sale of the goods. However, in this particular case, the dutiability is exempted by a specific notification. The department is granting the benefit of the notification, undisputedly in respect of moulds utilised by the appellants, in the factory itself and which are not subject matter of sale invoices. But the duty has been demanded only in respect of those 41 moulds which have been sold to B.P.L. Finance Ltd. by denying the benefit of the exemption

notification in question. This is totally an illogical and irrelevant consideration. The goods are dutiable, irrespective of sale or not. But once they are exempted from payment of duty on its further utilisation in the factory itself, then the question of collecting duty does not arise. The grant of benefit of exemption under notification in question is only on the criteria of the goods being "manufactured in a factory and intended for use in the factory in which they are manufactured". Admittedly, the goods manufactured, were intended for use in the factory in which they were manufactured, thus the question of discharging duty on the basis of mere fact of raising an invoice in favour of B.P.L. Finance Ltd. does not create a liability for charging duty at all. So long as the goods have been manufactured in a factory and are intended for use in the factory in which they were manufactured, the exemption straight away applies. As stated earlier, the levy of excise duty is on manufacture and not on saleability, as already noted from the rulings cited above.

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