

Kwality Printers Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-02-1994

Reported in : (1994)(73)ELT901TriDel

Appellant : Kwality Printers

Respondent : Collector of Central Excise

Advocate for Pet/Ap. : Shri. V. Lakshmi Kumaran

Judgement :

1. This is an appeal filed by the Assessee against impugned order dated 21-4-1986 passed by the Collector of Central Excise, Bombay.
2. The appellants are engaged in the printing cartons. The Collector who adjudicated the proceedings confirmed the demand holding that they have manufactured and cleared the excisable goods viz. Printed Cartons during 1982-83, 1983-84 and 1984-85 from their factory on their own account as well as on behalf of others and denied the benefit of exemption in terms of Notification No. 83/83 on the ground that aggregate value of the clearances exceeded the exemption limit.
3. Shri V. Lakshmi Kumaran, learned Counsel for the appellants attacked the impugned order mainly on three grounds : (i) He said that the Collector erred in clubbing the clearances of other 4 units with that of appellants on the ground that the Printed Cartons manufactured by other units were glued/pasted in the

premises of the appellants. But it is a fact that other units have sent the printed paper or paper board to M/s. Janta Paper Box Makers which is a separate unit and not connected with the appellants and from them the other units have done the job work for punching the cartons. It was not even glued by the appellants but clubbed on the ground that other units have got the printed cartons glued at the premises of the appellants through a common contractor. The printed cartons for the other units have emerged as soon as they were punched at the premises of M/s. Janta Paper Box Makers and no further duty can be levied on the printed cartons for the reason that the same were glued at the premises of the appellants.

Referring to the Explanatory Notes for Budget 1982-83 he said that even if printed cartons are supplied without glueing, such cartons would be dutiable under sub-item (10) of Item 17 of the erstwhile Central Excise Tariff. It is further clarified in this Explanatory Note that if the printed cartons or printed boxes are cleared in an unassembled condition on the payments of appropriate duty applicable to this item and if such printed cartons or printed boxes are assembled elsewhere, no further duty will be attracted. He contended that duty is attracted only at the stage when the printed sheets are punched to get the flattened and unassembled printed cartons.

Explanation to Budget 1982-83 clearly indicates that no further duty is leviable on the activity of mere glueing. He referred to the decision of the Supreme Court in the case of *Oriental Timber Industries - 1985 (20) E.L.T. 202 S.C.* wherein it was held that no question of double taxation arises as duty is leviable only once on the plywood as it comes out of the press in the panel or block stage and no further duty is to be levied on the cartons which are made out of the plywood blocks or panels while interpreting Section 2(f) of the Act with reference to Tariff Item 16B as it stood at that time. He also referred to the decision of the Supreme Court in the case of *Telangana Steel Industries and Ors. v. State of Andhra Pradesh and Ors. - 1994 (93) STC Page-187* wherein it was held that wires are not distinct from rods and where the wire rods purchased by the appellants had suffered sales tax in Andhra Pradesh, Sales Tax could not again be realised from the appellant on his sales in that state of iron wires produced from the wire rods, with reference to Sales Tax Law.

(ii) The second ground raised on behalf of the appellants is that even if it is assumed that for the purpose of small scale exemption notification all the clearances have to be clubbed since the exemption is applicable to the goods but the liability to duty is on the manufacturer and in view of the clear finding by the Collector that other four units are independent entities, the demand for duty on the printed cartons manufactured by them cannot be made from the appellants. He said that as per Rule 7 of Central Excise Rules, 1944 duty liability is on manufacturer and referred to a series of decisions including in the case of *Super Printers v. Collector of Central Excise, Hyderabad*, reported in 1987 (30) E.L.T. 745 with reference to the term manufacture under Section 2(f) of the Act.

(iii) Notwithstanding the above grounds, Shri Lakshmi Kumaran submitted that even if all the clearances are clubbed together it falls within the exemption limit if benefit under Section 4(4)(d)(ii) is given, but the Collector has computed the quantum of duty without extending that benefit by treating the invoice price as the assessable value. He said that total value of clearances of all the units for the year 1982-83 comes around Rs. 15,73,356.17 and if duty is deducted under Section 4(4)(d)(ii) while determining the assessable value, it is within the limit to avail exemption in terms of Notification No. 83/83. In support of his contention that assessable value has to be arrived at after allowing abatement of duty payable under Section 4(4)(d)(ii), he referred to a series of decisions including the decision of the Supreme Court in the case of *Bata Shoe Company (P) Ltd. v. Collector of Central Excise*, reported in 1985 (21) E.L.T. 9 (S.C.).

3A. It was contended by Shri Bhansali, learned Senior Departmental Representative for the Revenue that since the goods were manufactured in the premises of the appellants on behalf of others, appellants are the manufacturers and exemption is not applicable since the value of clearances by or on behalf of other manufacturer exceeded the exemption limit in terms of Notification No. 83/83. Since the appellants are the manufacturers, the Department was justified in demanding duty from them in terms of Rule 7 of the Excise Rules and it was not even the case of the parties that duty should be demanded from others before the adjudicating authority but now they have taken the new plea before the Tribunal. He said that printed boxes and printed cartons whether in folded or in flattened

form or whether in assembled or in unassembled condition are dutiable under the Tariff Item 17(3). Accordingly duty can be charged at any stage in view of the term whether or not in the Tariff Entry and whether or not was not interpreted by the Supreme Court in the case of Oriental Timbers (supra) referred to by the other side. He also said that since the duty is leviable on assessable value, assessable value cannot be reduced by duty amount under Section 4(4)(d)(ii) to determine the assessable value for considering the issue of exemption limit. Neither duty was paid nor was shown in the invoice and such an element of duty cannot be deducted and referred to the Order No. 59/94-C, dated 31-1-1994 of the Tribunal in the case of A.Ramaraja Surgical Cotton Mills in support of his contention.

4. We have considered the submissions - whether any particular process amounts to manufacture cannot be decided by any general rule of principles but to be decided in respect of each relevant item emerging out of the process depending upon the facts and circumstances of the case. In the instant case whether particular process amounts to manufacture is not an issue but more than that who is the manufacturer of the item in question and at what stage duty can be charged since the item has undergone more than one process, are the issues to be considered as it was rightly pointed out by the Departmental Representative. The item is chargeable to duty under Tariff Item 17(3) and Tariff Item 17 as it stood at the relevant point of time is as under

Item No.	Tariff Description
(1)	Paper and paper board (in- Ten per cent ad valorem eluding paper or paper boards plus two thousand which have been subjected to and five hundred various treatments such as coating, rupees per metric impregnating, corrugation, crep- tonne.

(2) Carbon and other copying Thirty two and a half papers (including duplicate sten- per cent ad valorem.

cils) and transfer papers, whether (3) Boxes, cartons, bags and other Thirty two and a half packing containers (including flat- per cent ad valorem.

tened or folded boxes and flattened As can be seen from the records we find that the other four units have supplied raw materials of printed duplex boards/papers

etc. to the appellants and got the printed cartons manufactured from them. The said goods are then sent to M/s. Janta Paper Box Makers, for punching and after punching they have come back for the purpose of glueing or pasting and the goods were cleared from the appellants' Company on completion of process of pasting or glueing. In view of the fact that all the units are the separate legal entities and the other four units have supplied the raw materials to get printed cartons manufactured and taking into consideration that none of them is dummy unit nor appellants are the hired labourers, it cannot be said that appellants are not the manufacturer. Further, it is settled position that mere supplier of raw material is not the manufacturer but the person who manufactures is the manufacturer. In the facts and circumstances of the case the Department was justified in clubbing the clearances of other units since the goods were cleared on completion and treating the appellants as the manufacturers. On going through the tariff entry, we are not convinced with the arguments advanced by the appellants that duty can be charged only at the stage as soon as the goods were punched since the goods were completed even without glueing. It is true that they have reached the stage for the purpose of charging duty in view of description in the tariff entry as well as explanation given in the Explanatory Notes to Budget 1982-83 that even if printed cartons are supplied without glueing, such cartons would be dutiable under this sub-item. But it does not mean that duty cannot be charged at later stage if it was not charged at the earlier stage. Duty can be charged at any stage as it was argued by the Departmental Representative as specified in the Tariff Entry that it is subjected to duty either in assembled or in unassembled condition. It is not even the case of the party that goods have already suffered duty to claim set off or to avoid double taxation. But we find that there is substantial force in the argument advanced by the appellants' Counsel that value should be computed by deducting the duty payable on the article at the time of removal in terms of Section 4(4)(d)(ii) of the Act. According to Section 4(4)(d)(ii), value in relation to any excisable goods does not include the amount of the duty of excise, sales tax and other taxes if any, payable on such goods. It is clear from the wordings that duty payable if any is to be deducted and not the actual duty paid.

Irrespective of the fact whether duty element was shown in the invoice or not if the duty is payable such duty is to be deducted while determining the assessable

value and sometimes it may be beneficial to the assesseees in the marginal cases like in the present case. In the absence of any restriction or explanation in the relevant notification, following the decisions cited by the appellants on this issue, we hold that value of clearance is to be determined in terms of Section 4(4)(d)(ii) of the Central Excises and Salt Act, 1944. Accordingly, the appellants succeed on this issue. The appeal is disposed of in the above terms.

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