Udaipur Phosphates and Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-30-1994

Reported in : (1994)(73)ELT906TriDel

Appellant : Udaipur Phosphates and

Respondent : Collector of C. Ex.

Judgement :
1. This appeal is directed against the impugned Order-in-Appeal passed by the Collector of Central Excise (Appeals), New Delhi.

2. Shortly put the facts of the case are that the appellants M/s.

Udaipur Phosphates & Fertilizers Ltd., Khemli, Udaipur, are engaged in the manufacture of Sulphuric Acid Oleum etc. falling under Chapter Heading No. 2807 of CET, 1985. Two Demand-cum-Show Cause Notices were issued to them to show cause as to why the duty amounting to Rs. 1,04,514 be not recovered from them on the ground that they did not pay Central Excise duty on the intermediate product, namely, Sulphuric Acid used in their final product Oleum, which was cleared and removed without payment of duty to KFTZ Kandla and 100% export oriented units during the period from April 1991 to September, 1991 and October, 1991 to November, 1991. The appellants contested the Show Cause Notices inter alia on the ground that the subject intermediate product, namely, Sulphuric Acid is not an excisable goods. However, the Assistant Collector of Central Excise & Customs, Udaipur, after usual adjudication proceedings confirmed the said demands by his common Order-in-Original dated 31-3-1992. Against that Order of the Assistant Collector, the appellants filed their appeal before the Collector (Appeals), but without success. Hence the present appeal.

3. Arguing on behalf of the appellants, Shri Pradeep Jain, learned counsel, submitted that intermediate product, namely, "Sulphuric Acid" in the instant case is not marketable as such and, therefore, no duty could be demanded. He took us through the impugned Orders and also to the process of manufacture to emphasise that the Sulphuric Acid cannot be said to be marketable commodity and merely because the Sulphuric Acid is covered by sub-heading 2807 of CET, 1985, it cannot be said that the goods became excisable goods or marketable goods as defined under Section 2 (d) of the Central Excises and Salt Act, 1944. To buttress his point, he cited the case of Bhor Industries Ltd. v.Collector of Central Excise, reported in 1989 (40) E.L.T. 280 (SC), wherein it was held that "Excisable Goods" under Section 2(d) of the Act means goods specified in the Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt.

Therefore, it is necessary to find out whether there are goods, that is to say, articles as known in the market as separate distinct identfiable commodities and whether the tariff duty levied would be as specified in the Schedule. Simply because a certain article falls within the Schedule it would not be dutiable under excise law if the said article is not "goods" known to the market. Marketability, is therefore, an essential ingredient in order to be dutiable under the Schedule to the Central Excise Tariff Act, 1985 and further that the burden to prove that the subject goods are dutiable is on the Department. Alternatively, it was also submitted that the authorities below erred in denying the benefit of exemption Notification No.217/86-C.E., dated 2-4-1986 on the ground that the benefit of said Notification is not available to the appellants as the finished/final product, that is to say, Oleum has been cleared without payment of central excise duty. In reply, Shri S.K. Sharma, learned JDR, supported the impugned Order and cited the case of Tata Iron & Steel Co. Ltd. v.Union of India, 1988 (35) E.L.T. 605 (SC), wherein, according to him, it was held by the Apex Court that duty is leviable on forged products and also on the completion of the manufacture of finished goods.

4. We have considered the submissions. It is not in dispute that the appellants are manufacturing Oleum of different grades and during the process of manufacture of such Oleum, intermediate product, namely, Sulphuric Acid (which is the subject matter of dispute in the present appeal) comes into existence. It is also not in dispute that the Sulphuric Acid is covered specifically by sub-heading 2807 of CET, 1985. Describing the process of manufacture, the appellants in their letter dated 23-12-1991 have stated as follows : "The process of manufacture of Sulphuric Acid and Oleum (fuming sulphuric acid) is a continuous uninterrupted & integrated process, where sulphur is fed as raw material and burnt in presence of dry air to sulpher dioxide and then oxidised to Sulphur trioxide.

Sulphur trioxide is absorbed in sulphuric acid and water is being added to convert dissolved sulphur trioxide to sulphuric acid of required strength. The said two raw materials give us the final product i.e. sulphuric acid 23% Oleum and 65% Oleum depending upon the concentration of sulphur trioxide in sulphuric acid." 4.1 The Assistant Collector has recorded a finding that from the aforesaid manufacturing process, it is clear that first Sulphuric Acid is formed and the said Sulphuric Acid is charged with more Sulphur Trioxide (SO_3) and different strength of Oleum is formed. Thus, Sulphuric Acid is the intermediate product before Oleum is produced and is marketable. While affirming the aforesaid finding of the Assistant Collector, the Collector (Appeals) has also held that in the instant case, Sulphuric Acid is an intermediate product before Oleum is produced and it is also marketable. It may be true that the appellants may not be marketing the Sulphuric Acid in this case but that does not mean that the Sulphuric Acid is not goods or the same does not have marketability. These findings of the authorities below, in our considered opinion, are in line with the ratio of the judgment rendered by the Apex Court in the case of Plasmac Machine Manufacturing Co. Ltd. v. Collector of Central Excise, 1991 (51) E.L.T. 161, wherein repelling the contention advanced by the assessee that the Tie Bar Nuts were used in course of the continuous process of manufacture of the machine and formed its integral part, being specifically made for use in the machines; and that Tie Bar Nuts were neither available nor saleable in the market, their only function being to fix the platens in correct distances between Tie Bars, the Court observed that: "The submission that the Tie Bar Nuts manufactured by the appellants to specifications of Injection

Moulding Machines for captive use and not for sale is also, in our view, untenable as such use is not determinative of the question. If the goods are capable of bing sold that would be enough." 5. Thus, we hold that the Sulphuric Acid in the instant case is an excisable goods liable to duty.

6. As regards the alternative contention that the appellants were entitled for the benefit of Notification No. 217/86-C.E., we find that the Assistant Collector has denied the said benefit on the ground that the finished/final product in the instant case has been cleared without payment of Central Excise Duty. The Collector (Appeals) has confirmed the same on appeal by the appellants. We have ourselves perused the said Notification and find that it is a conditional one. The first proviso to the said Notification provides that "Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final pruducts (other than those cleared either to a unit in a Free Trade Zone or to a 100% Export Oriented Unit), which are exempt from the whole of the duty of excise leviable thereon or are chargeable to "Nil" rate of duty". In the instant case duty has been demanded on the clearance of 120.70 M.T. of Oleum 65% without payment of Central Excise Duty to KFTZ Kandla and 100% export oriented unit for the period from 10/91 to 11/91. Therefore, the findings of the authorities below that Sulphuric Acid in the instant case used captively in the manufacture of the final product, namely, Oleum was not entitled for the benefit of the said Notification No.217/86-C.E. as the final product has been cleared without payment of central excise duty cannot be assailed. The contention of the appellants that the benefit of the said Notification is not made dependent upon clearance of excisable goods leads nowhere and to be recorded only to be rejected. No other point was urged.

7. In the result, we uphold the impugned Orders and reject the appeal being devoid of any merit.