

Collector of Central Excise Vs. Kapil Products

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-15-1994

Reported in : (1994)(74)ELT407TriDel

Appellant : Collector of Central Excise

Respondent : Kapil Products

Judgement :

1. This is a departmental appeal against the order of Collector of Central Excise, Bombay dated 27-2-1987.

M/s. Kapil Products, Asha Studio Compound, Sion Trombay Road, Chembur, Bombay-400071 (hereinafter referred to as the 'assessee'), holders of L-6 to receive Benzene and Toluene (hereinafter referred to as 'the inputs') at concessional rate of duty for special industrial purposes, were alleged to have been removing these inputs without carrying out any process on such inputs and without using the same in their factory premises for the intended use specified in Col. No. 5 of the Table annexed to Notification No. 75/84, dated 1-3-1984, the officers seized one consignment of Benzene in-transit alongwith the truck and the assessee had admitted that they did not have any plant or machinery for the manufacture of solvents and that they did not use the inputs for their intended use.

As the assessees were not found eligible for availment of the concessional rate of duty prescribed by Notification No. 75/84, demanding, inter alia, an amount of Rs. 10,31,951.65 being the differential Central Excise duty on 3,63,287 Ltrs. of

Benzene and 21,16,012 Ltrs. of Toluene received under Rule 192 of Central Excise Rules, 1944, during the period 8-7-1984 to 8-1-1985.

The assessee, in their reply, had stated that they were manufacturing thinners and solvents by hand process, that the process of manufacture, etc. was known to the Central Excise Department, and that they were availing concession under Notification 35/73, dated 1-3-1973, and 75/84, dated 1-3-1984, correctly.

The Collector vide his adjudication order No. V-Adj (6) 15-2/85 dated 27-2-1987 found that the assessee was liable under Rule 196 to pay differential duty on the quantity of 4907 Ltrs. of Benzene only and confirmed the demand for differential duty amounting to Rs. 8,381.95 on the said quantity of Benzene. The seized goods were confiscated and a penalty of Rs. 1,000/- was imposed by the Collector on the assessees.

Regarding that part of the allegation to the effect that the assessee had not utilised Benzene/Toluene received under Chapter X procedure for the intended use specified in Notification No. 75/84, the Collector has remarked that inasmuch as the demands issued on similar grounds to some other parties had already been withdrawn by the Department, he was not pursuing that allegation in the case of this assessee on grounds of equity. The department's case is that the assessee had not actually utilised thinners i.e. Benzene/Toluene for the intended use as specified in Col.

5 of the Table annexed to Notification 75/84, dated 1-3-1984. As per provisions of the notification, this should have been intended for use as thinners for manufacture of paints, varnishes lacquers etc. or as solvent for the extraction of alkaloids, and actually used as such.

There is nothing on record to prove that the assessees had, in fact, utilised the inputs for such "intended use".

The assessees had themselves admitted in the proprietor's statement dated 8-1-1985 that they did not have any plant or machinery for the manufacture of solvents and that they did not actually use the chemicals for such use.

Notification 75/84, dated 1-3-1984, clearly provides that the concessional rate is subject to the condition that it is proved to the satisfaction of an officer not below the rank of the Assistant Collector that such goods are used for the intended use specified in Col. No. 5 of the said Table. The language used in this Notification is different from the language used in the proviso to Notification 35/73, dated 1-3-1973, where it was laid down that the exemption is subject to the condition that the Assistant Collector is satisfied that motor spirit is intended for use as solvents. The difference between the two notifications is that in Notification No. 75/84, dated 1-3-1984, to avail exemption, such goods must have been used for the intended use whereas in Notification dated 1-3-1973 exemption is available if the goods are intended for use as solvents. Thus, it is clear that while no end-use verification was necessary under Notification 35/73, such an end-use verification is obligatory and built in as one of the pre-conditions under Notification 75/84, dated 1-3-1984.

While this is so, it was not proper on the part of the assesseees to avail the concessional rate of duty when they themselves had admitted that the inputs were not actually used for the intended use specified in the notification.

The Collector should have considered this aspect in its correct perspective before passing the order allowing the assesseees to avail of the exemption, on equity or otherwise.

3. Learned Counsel for the respondents drew attention to the written reply filed by them and stated that the Collector does not have any power to file an appeal before the Tribunal against his own order and the appeal could be filed only under the orders of the reviewing authority the C.B.E.C within a period of one year.

4. Insofar as merits are concerned the issue is fully covered by Tribunal's order in the case of Shalimar Chemical Industries, Bombay reported in 1991 (36) ECR 55 (CEGAT SB-C). This order of the Tribunal shows that end-use verification is not a requirement under Notification 75/84-C.E. The wordings of this Notification as well as the Notification 35/73 are materially the same.

5. Learned DR stated that the appeal has been filed in terms of the Board's Order 19-R, dated 25-2-1988, and they may be allowed to file a copy thereof.

6. He further stated that he would like to cite the cases reported in 1986 (23) E.L.T. 550 and 1994 (70) E.L.T. 305.
7. We have considered the above submissions. We observe that the D.R. has been able to show the Board's Order No. 19-R, dated 25-2-1988 directing the Collector to file an appeal against the impugned Order No. 28/86, dated 27-2-1987. Hence the appeal is maintainable.
8. Further, we observe, that the Collector has on one hand mentioned that he is refraining from pursuing the charge relating to non-use of Benzene/Toluene received under Chapter X procedure for the intended use as the department has since ordered withdrawal of demands raised against some other parties on the ground of failure to produce evidence regarding such use, on the other hand he has proceeded to record observations and findings regarding non-utilisation of a quantity of benzene in the manufacture of solvent and its removal. This was rather strange for the two charges mentioned by him in his findings are indeed the two facets of the same issue and the charge of clandestine removal follows in its trail.
- Hence we consider that it was not proper on the part of the Collector to do so and he should have dealt with all the aspects of the case on their respective merits.
9. As regards the Tribunal's order quoted by the Learned Advocate we find that while it does state that end-use verification was not necessary but it says so in the context of the fact that: "It is not the department's case that the appellants did not manufacture solvents based on Benzene or Toluene or that they diverted the raw materials to other uses;" Whereas in the case before us that department has specifically alleged that the quantity in question had not been put to intended use but had been clandestinely removed. The cited case was therefore distinguishable on facts.
10. In our opinion when notification gives an exemption based on intended use the claimant (beneficiary) was required to put it to the declared use and if he fails to do so the consequences would follow. As rightly pointed out by the Learned D.R, in the case of Siemon Ltd. reported in 1994 (70) E.L.T. 305 relating to exemption to goods received under Chapter X procedure the Tribunal has observed, inter alia

that: "the words "intended use" appearing in Notification No. 118/75-C.E., dated 30-4-1975 should be interpreted in a meaningful way. If it cannot be shown that these goods which are removed for the 'purpose of manufacture of further excisable goods are used for that purpose, then it is clear that the goods so cleared were not cleared for the "intended use" of the manufacture of further excisable goods. The "intended use" therefore, can be derived from the fact that those goods were actually used in the manufacture of excisable goods. If it cannot be shown that they were used in the manufacture of further excisable goods then it can never be said that these goods were removed for the "intended use" of manufacture of further excisable goods".

We consider that these observations will apply with all the more force in a case where the manufacturer was himself required to use the goods received under Chapter X procedure for the declared purpose.

11. In the case before us no effort has been made by the appellants to produce any evidence to show that the quantity in question had actually been used by them for declared purpose whereas the department has relied upon the proprietor's own statement to show that the goods were not put to "intended use".

12. In the Siemon's case cited by Learned D.R. before us the Tribunal has gone on to observe that since "the appellants' company could not produce any document to show that these goods were actually used and, therefore, in terms of Rules 192 & 196 of Central Excise Rules, they are liable to pay duty on those goods which are not shown to have been used in the manufacture of further excisable goods".

13. Following the ratio of the orders cited by the Learned D.R. we hold that the Learned Collector had erred in omitting relevant aspects of the matter and in not determining the full duty liability on the basis of all the aspects of the case but was required to do so on merits.

14. The penalty aspect can be considered only after a determination of the full duty liability as one of the factors to be kept in view is the seriousness of the matter which ought to be adjudged inter alia with reference to the quantum of duty

involved (as well).

15. We therefore, remand the matter to the Collector for redetermination of duty liability and penalty in the light of the above observations and the law. He should allow an opportunity to the appellants to make their submissions then pass an appropriate order.

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