

Collector of Central Excise Vs. Hemali Cosmetics

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-08-1995

Reported in : (1995)(80)ELT434TriDel

Appellant : Collector of Central Excise

Respondent : Hemali Cosmetics

Judgement :

1. This is a Department's appeal filed against the order of Collector (Appeals), Bombay dated 29-6-1988.

2. Ld. D.R. stated that the respondents M/s. Hemali Cosmetics are manufacturers of cosmetics and toilet preparations including Tiara brand shampoo. It was the Department's case that the Tiara brand was lent to them by M/s J.K. Helene Curtis Ltd., the owner of this brand and the respondents were not independent manufacturer and were manufacturing the goods on behalf of J.K. Helene Curtis who were not entitled to the benefit of the notification and therefore the respondents themselves were not entitled to the exemption availed of by them under Notification No. 140/83, dated 5-5-1983. Hence, they are liable to pay duty for the period December, 1983 to March, 1984 as mentioned in the Show Cause Notice dated 16-7-1984 under Section 11A and were also liable to penalty under Rule 173Q.3. The Assistant Collector had dropped the demand treating the respondents as independent manufacturers and the Collector (Appeals) had confirmed the A.C.'s order, hence the appeal.

In this respect he would draw attention to the Grounds of Appeal filed by the Collector and reiterate the same.

4. Ld. Counsel stated that he would like to draw attention to the reply to the show cause notice filed before the A.C. from which it would be clear that the respondents were the manufacturers of the goods in question. They had purchased raw-materials from independent sources and manufactured the goods in their own factory and sold the entire quantity to M/s. J.K. Helene Curtis after affixing the Tiara brand as desired by M/s. J.K. Helene Curtis. Their transactions were on principal to principal basis and merely fixing of the brand name of M/s. J.K. Helene Curtis does not mean or show that they were not independent manufacturers.

5. In fact it is already a settled issue now that merely affixing the brand name of the customer does not mean that the manufacturer was not independent. In reply to the show cause notice itself they have cited a number of High Court judgments but it has already been settled since then by the Supreme Court judgment in the case of Union of India v. Cibatul Ltd. 6. He would further state that the show cause notice itself shows them as the manufacturer of goods. Further more, the notice is partially time-barred.

7. It was their contention that since they had rightly availed of the exemption therefore, no amount was due from them.

8. We have considered the above submissions. We observe that Notification No. 140/83, dated 5-5-1983 has been amended from time to time. The amendment making the exemption inapplicable to the goods where a manufacturer affixes them with a brand name or trade name of another person who is not eligible for grant of exemption under this notification was introduced only on 22-9-1987 by issue of Notification No. 224/87. Therefore, prior to this date merely affixing of the brand name of the customer or another manufacturer who was not eligible for the benefit did not deprive the actual manufacturer of the goods, of the benefit of this notification. Since, admittedly the period involved is that of prior to this amendment, therefore, the exemption could not be denied unless it was shown that the transactions were not at arm's length and the relationship was not on

principal to principal basis.

However, the department has not produced any evidence in this regard.

Hence, on this score also the department's case remains unsubstantiated.

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