

Pamwi Tissues Ltd. Vs. Collector of Central Excise

Pamwi Tissues Ltd. Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/8613

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-31-1995

Reported in : (1996)(86)ELT278TriDel

Appellant : Pamwi Tissues Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This appeal is directed against the impugned order passed by the Collector of Central Excise & Customs, Chandigarh i.e. 36-C.E./91, dated 27-12-1991. By this order, the Id. Collector has confirmed a demand of duty of Rs. 4,63,75,089.28 and also has imposed a penalty of Rs. 1,00,00,000 (Rs. One Crore only). The brief facts of this case are that the appellant licensed to manufacture Paper, falling under Chapter 48 of the Schedule to the Central Excise Tariff Act, 1985, were manufacturing, besides other varieties, speciality paper for packaging purposes. During the period 1-3-1986 to 20th March, 1990, they are said to have manufactured and cleared eight varieties of such paper, namely, Glazed Packaging Tissue (GLPT), Laminating Base Tissue (LBT), Release Base Tissue (RBT), Coloured Release Base Tissue (CRBT), Special Packaging Tissue Paper (SPT), Packaging Tissue Paper (PT), Bleached White Tissue Paper (BWT) and Tracing Base Tissue Paper (TBT) for which classification was claimed by them under sub-heading 4805.90 of the Central Excise Tariff Act, 1985. They also are said to have claimed and availed of concessions of Central Excise duty on clearances of these products effected during March, 1986 in terms of Notification

No.25/84-C.E., dated 1-3-1984 and during the period 1-4-1986 to 20-3-1990 in terms of Notification No. 138/86-C.E., dated 1-3-1986.

2. The Preventive Staff of the Central Excise Collectorate, Chandigarh visited the factory premises on 10-11-1989. Samples of eight varieties of packaging paper mentioned above were drawn and later got tested from the Chemical Examiner, Central Revenue Control Laboratory, New Delhi, who in his test analysis report is said to have opined that: "the sample is in the form of white translucent, glossy and glazed sheet of paper" in respect of four varieties namely Glazed Packaging Tissue (GLPT-40), Laminating Base Tissue (LBT-40), Release Base Tissue (RBT-70) and Coloured Release Base Tissue (CRBT-60) and had also reported that the sample "resists the penetration of fats and oils". Therefore, the department took up the stand that with such characteristics such varieties of paper attracted classification under Heading No. 48.06 of the said Schedule, instead of sub-heading 4805.90, and therefore, it was the department's case that the said paper was not entitled to concessional rates of duty as envisaged in the said Notification (supra).

3. It was also alleged that the appellants in their declaration made in the classification lists, did not mention about the translucent or glossy characteristics of their packaging varieties of paper and declared these varieties as classifiable under sub-heading 4805.90 as "other uncoated paper and paper board in rolls and sheets". Therefore, it was alleged that they suppressed this information which was material for determining the correct classification of their product. The department also recorded the statement of one Shri R.K. Dutta, Chief Paper Maker of the noticee Co., dated 10-11-1989, 1-9-1990 and 3-1-1991. He appears to have stated that after the machine stage, varieties of paper mentioned above were super-calendered to give a smooth surface and to impart glaze; that after super-calendering, opacity of the paper was reduced from 5% to 15% and that composition and specification of their product had not been changed at any point of time as they had maintained the quality.

4. The preventive Staff, on 26-12-1988 is said to have taken over laboratory test reports of the appellant, for the period 13-6-1987 to 26-12-1988 in respect of paper

manufactured by them. The department also obtained opinion of the Central Pulp & Paper Research Institute, Saharanpur on ten sample reports taken from the lot. The said Institute by their report dated 13th December, 1990 is said to have opined that "Generally papers having opacity values less than 80% are translucent and above are considered opaque" and that In the light of these guidelines, all the test reports resumed from the appellants were examined by the Central Excise Officers and it was observed that the paper manufactured upto machine stage had a maximum capacity of 80% plus. Thereafter, the paper undergoes super-calendering which reduces opacity to the extent of 5% to 15%. In view of this, the department thought that the four varieties of packaging paper, namely, GLPT-40, LBT-40, RBT-70 and CRBT-60 manufactured during the period from 1-3-1986 to 20-3-1990 were both translucent and glazed and thus these varieties of paper were correctly classifiable under sub-heading 4806.20 of the Schedule to the Central Excise Tariff Act, 1985.

On 18-12-1990, the Preventive Staff took into possession three super-calendering registers maintained by the appellants pertaining to the period 28-11-1988 to 27-4-1990. Expert opinion from the Central Pulp and Paper Research Institute was also sought on data contained in these registers by sending six representative pages of these registers.

These registers were main-tained by the appellants in their own laboratory for quality control as stated by Shri N.K. Vasu, Dy. Manager in his statement dated 18-12-1990. In its report dated 7-1-1991, the said Institute opined that all the varieties of pages, data in respect of which had been examined by them as contained in the representative pages of super-calendering registers were translucent. From the above, the department alleged that the four varieties of paper namely GLPT-40, LBT-40, RBT-70 and CRBT-60 manufactured by the appellants were translucent during the entire period in question.

It was alleged that these test reports and super-calendering registers being maintained in the laboratory of the appellants for quality control purpose had not been declared by them to the department under Rule 173-G(5) of the Central Excise Rules, 1944 as figured out from their letter dated 25-3-1991 written by Shri

N.K. Vasu, Dy. Manager, Excise/Despatch. It is alleged that these test reports being maintained for quality control purposes had direct bearing on the production of paper and therefore, it should have been included in the declaration filed under Rule 173-G(5). Therefore, it was alleged that omission to include these in the declaration indicated that the appellants intended to conceal these vital documents which could have been changed the classification of their products to their disadvantage.

The officers also had examined the wholesale dealers of the appellant at Bangalore and Shri K.L. Ramesh, Partner of M/s. Sri Vijayalakshmi Agarbatti Works, Bangalore. On the basis of these materials, the appellants were issued the show cause notice dated 1-4-1991 calling upon them to show cause as to why differential duty to the extent already stated which has been confirmed in the impugned order should not be demanded from them under Section 11A of the Central Excises and Salt Act, 1944 by invoking extended period on the ground that they had suppressed material facts about the characteristics of product relevant for the classification of the goods and why penalty under Rule 173Q of the Central Excise Rules, 1944 be not imposed upon them.

5. The appellants filed their reply dated 19-4-1991 had expressed their dissatisfaction with the test carried out by the Chemical Examiner and requested for re-test of the samples in respect of the four varieties of paper for which they had deposited the requisite fees. The said samples were re-tested on the request. The report of re-testing was furnished by the Chief Chemist vide his letter dated 25-10-1991. Copy of this report was furnished to the appellants. The appellants were called upon to appear for personal hearing on 20-11-1991. The appellants by their reply dated 17-11-1991 expressed their difficulty to file their detailed reply and make effective representation within a short span of time and requested for two months time for filing the reply. In response to their letter, the appellants were informed that it was not feasible to give time of two months to file the reply and they were informed that they could appear for personal hearing on 6-12-1991 or on 12-12-1991 as may be convenient to them. The appellant again wrote a letter dated 4-12-1991, by which they again pleaded for extension of time by two months to enable them to obtain expert legal advise in the matter. In reply the department

informed them that their request for adjournment could not be acceded to and if they desire they would appear for personal hearing on 12-12-1991. In response, the appellants by their letter dated 12-12-1991 submitted the followings : "(i) that the principles of natural justice require that reasonable opportunity of making submissions against charges levelled in the show cause notice and thereupon of cross-examining witnesses; if any, and ultimately of making submissions in personal hearing, be given.

(ii) that the show cause notice dated 1-4-1991 is based on serious allegations and involves controversial facts. As show cause notice relates to a period of five years and demands a huge amount of duty, thus sufficient time may be given to controvert the facts; and (iii) the Noticee Co. also requested for cross-examination of Chief Chemist, Chemical Examiner and other witnesses, whose statements or opinions have been relied upon in the show cause notice." 6. The Id. Collector did not accede to the request of the appellants and proceeded to pass the impugned order. The Id. Collector has held that they were given opportunity to make their submissions for filing the reply and also to make their personal submissions, which they had not utilised. He has also noted about the request made by the appellants for cross-examination of Chemical Examiner, Chief Chemist and also Chief Chemical Examiner of Central Pulp and Paper Research Institute and two other persons Shri K.L. Ramesh and Shri S.R.Ranganathan. The Id. Collector has held that on merit, no reply has been furnished by the appellants despite adequate opportunity granted to them. He has held that the opinion of Chemical Examiner as also of the Chief Chemist of Central Revenue Control Laboratory is categorical and unambiguous. Therefore, he has observed that he did not find any justification for the cross-examination of these two officers in the light of their categorical test reports. He has held that the same reasoning applies in so far as the Chemical Examiner of Central Pulp and Paper Institute, Saharanpur is concerned. As regards Shri Ramesh and Shri Ranganathan are concerned, Id. Collector has held that though their statements were relied upon as regards the use of paper by them which was purchased from the appellants but nothing much-turns on these statements. He has held that this is a case where classification is primarily governed by the specifications and test reports. He has held that the appellants had been given more than adequate opportunity and the requests for cross-

examination appears to be only another attempt to delay the adjudication proceedings. The Id. Collector thereafter has proceeded to discuss the case on merits and has held that these circumstances lead to an undeniable conclusion that the paper manufactured by the appellants during the period 13-6-1987 to 26-12-1988 had opacity of less than 80% and, accordingly, glazed and translucent. He has also based his findings on the three registers maintained by the assessee for the said period. He has observed that it is no doubt true that there are no internal test reports recovered for the period 1-3-1986 to 12-6-1987 and it is also true that for this period no super-calendering register has been recovered by the Excise Officers and that for CRBT varieties, the internal reports do not show opacity range and the variety is also not shown in the super-calendering registers recovered, He has held to the extent that there is no direct test data either for the pre-super calendering stage or for the super-calendering stage. Further, he has held that the facts and circumstances of the whole case clearly suggest that even in the absence of direct test data, the inference cannot be drawn otherwise.

He has held that the nature of specific available evidence on record as mentioned above is such that it reveals the fact as it always existed during the period in question, and therefore, it clearly proves that the four varieties of paper manufactured and cleared during this period could not have been and were not other than glazed translucent paper.

He has held that firstly, the varieties manufactured were all along the same. Secondly, the statement of Chief Paper Maker of the appellant, is on record that there was no change in the composition or specification of these four varieties during the entire period. Noting all the other details also, Id. Collector has held that the totality of the evidence on record and the circumstances including the opinion of the Central Pulp and Paper Research Institute clearly lead to the conclusion that the four varieties of paper in question, manufactured and cleared by the appellants during the said period were only translucent. Therefore, he has confirmed the duty demanded for the larger period, by holding that the appellants had clearly misdeclared and suppressed the facts.

However, the Id. Collector has not given any reasons for imposing the penalty of Rs. one crore.

7. We have heard Shri D.A. Dave, Id. Advocate for the appellant and Shri J.P. Singh, Id. JDR, for the Revenue. Id. Advocate very vehemently argued this case and submitted that the impugned order suffered from total non-application of mind. There was a clear denial of principles of natural justice in as much as the appellants had not been given full and fair opportunity to submit their reply to the show cause notice and the test results supplied by the department. The opportunity of cross-examining the witnesses was also denied to them. Id. Advocate also submitted that in the present case, Id. Collector was not justified to reject the prayer for calling the witnesses for cross-examination. He submitted that the Id. Collector should have made known to them the reason for not granting the right to cross-examine the witnesses and thereafter should have proceeded to decide the case.

Therefore, to proceed without informing them the reasons for cross-examining the witnesses, is sufficient to hold that there is denial of principles of natural justice. He submitted that the cross-examination of Chemical Examiner was very vital. The case is based on the said test reports and the allegations of the department being not true, it was necessary to establish by cross-examination the Chemical Examiners to show that the procedure adopted by them in testing the samples is wrong and not based on standard test procedures, as a such facility is not available in the department and with the institution. He submitted that the question of translucency is a technical issue and for that matter every paper is translucent. The question of translucent of the paper has to be viewed in the light of Chapter 2 of sub-heading 48.05 and the opinion of the experts were required to be decided in this regard. Therefore, the Id. Collector having proceeded to close the case without giving them a full opportunity to defend the case in a matter of this nature was not at all justified. In this context, he relied on the ratio of the following cases :-M/s. Raja Imports & Exports v. Collector of Customs -1991 (56) E.L.T. 220 (Para 5).M/s. Pbeda Synthetics Pvt. Ltd. v. Collector of Central Excise - 1994 (74) E.L.T. 958.M/s. Golden Cable Co. v. Collector of Central Excise -1994 (71) E.L.T. 955 (Paras 4 & 5).Mencka Gandhi v. Union of India - AIR 1978 SC 597 (Paras 56,

58,59 &M/s. Madhu Milan Syntex Pvt. and Anr. v. Union of India and Anr.

1985 (19) E.L.T. 329 paras 34 & 35.

8. M/s. Mahendra Electricals Ltd. v. Union of India and Anr. -1986 (26) E.L.T. 882.

8. Ld. DR defending the order submitted that there was no violation of any of the principles of natural justice. He also submitted that right to cross-examine is not an absolute right and it largely depended on the facts of each case. In this context, he relied on the judgments rendered in the following cases :-Karnataka Public Service Commission v. B.M. Vijaya Shankar -1992 (58) E.L.T. 558 (S.C.).Payal Ashok Kumar Jindal v. Captain Ashok Kumar Jindal - 1992 (60) E.L.T. 19 (SC).Eagle Mineral Products v. Collector of Central Excise - 1988 (38) E.L.T. 315.

9. We have carefully considered the submissions made by both the sides and have perused the order. In this case, the appellant has not filed the reply to the show cause notice. The reason being that the sample reports were awaited and after the supply of the test reports, the appellants made a request for adjournment by two months to file the reply. This request was not considered and they were informed that they should appear for personal hearing on 6-12-1991 and 12-12-1991. In response to this, the appellant again sent a reply seeking time to file the reply as they stated that they required to consult legal experts.

They also made a request for cross-examining the witnesses. It is their plea that the department is invoking larger period and duty of Rs. 4.63 crores is being demanded from them. Therefore, they had made out a case for seeking further time to file their reply and they also had made out grounds for cross-examining the Chemical Examiners, both of the Deptt.

as well as that of the Central Pulp and Paper Research Institute. This request for cross-examining was made by them in response to the Collector's notice issued to them for personal hearing on 12-12-1991.

The Id. Collector has not given any reasons for disallow them the opportunity to cross-examine the witnesses. He has not informed them about the rejection of their request for further adjournment but has proceeded to decide the case ex

parte and confirm the huge duty demanded from them. Needless to say, that in several judgments cited by the Id. Counsel, it has been emphasised that a fair and full opportunity should be afforded to the party to defend themselves. In this case, the Collector has proceeded to close the case. He has given the reasons for rejecting the appellant's prayer for cross-examining the witnesses in the impugned order, without informing in advance and giving another opportunity to appear for personal hearing. They should have been given an opportunity to present themselves for personal hearing after being made known about the rejection of their prayer. In this case the Collector has also not given a detailed finding on the allegation of mis-declaration and suppression and he has also not given any reasons for imposing a penalty of Rs. 1,00,00,000 (Rupees One Crore only). It is, therefore, in the facts and circumstances of this case, just and proper to set aside the impugned order and remand the case for de novo consideration. We have also gone through the citations referred by them. We are satisfied that there is a failure of principles of natural justice in the present case and the ratio of the citations relied by the Id. Advocate apply to the facts of the present case. The appellant should file the reply to the show cause notice expeditiously.

The Id. Collector should consider the prayer of the appellant for cross-examining the witnesses and after granting them full and fair opportunity should decide the case as per law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com