Formica India Division vs Collector Of Central Excise And Ors. on 29 March, 1995

Equivalent citations: 1995(77)ELT511(SC), 1995SUPP(3)SCC552, AIRONLINE 1995 SC 716

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Bench: A.M. Ahmadi, S.P. Bharucha, K.S. Paripoornan

ORDER

S.P. Bharucha, J.

1. The dispute in these two appeals lies in a narrow compass. The appellants manufacture rigid plastic laminates. For this purpose, they procure paper, cotton fabrics and glass fabrics as raw materials and treat them with synthetic resin. This results in the manufacture of treated paper, treated cotton fabric and treated glass fabric. Layers of such treated paper, cotton fabric and glass sheets are compressed under heat to form rigid plastic laminates. The contention of the Revenue is that the intermediary product, namely, treated paper and treated cotton fabric (we are not concerned with treated glass fabrics) is liable to duty under Items 17(2) and 19(III) respectively of the Central Excise Tariff as in operation at the relevant date. Since these treated paper and cotton fabric sheets were consumed captively for the manufacture of rigid plastic laminates, admittedly, no duty was paid on the intermediary product under the aforesaid two Tariff Items, but duty was paid on the final product. The contention of the Revenue is that since the appellants had failed to pay the duty on the intermediary product under the aforesaid two Entries, the Revenue is entitled to recover the same. This contention was questioned on different grounds, but before us it was confined to the contention that even if the Revenue is right, the appellants would be entitled to a set off in respect of the excise duty payable under the aforesaid two items on the intermediary product by virtue of Notification No. 71 /71-C.E., dated 29th May, 1971. That Notification issued in exercise of power under Rule 8(1) of the Central Excises Rules, 1944, exempts rigid plastic boards, sheetings, sheets and films, whether laminated or not, falling under Item 15A(2) from so much of the duty of excise leviable thereon as is in excess of 30% ad valorem. The first proviso to that Notification reads as under:

> Provided that where, in the manufacture of rigid plastic board sheetings, sheets or films, whether laminated or not, any plastic material, cellophane, paper or cotton fabric on which the appropriate amount of duty of excise or the additional duty under Section 2A of the Indian Tariff Act, 1934 (32 of 1934), as the case may be, has already been paid, are used, the amount of duty of excise or the additional duty so paid shall

also be adjusted towards the duty payable on such rigid plastic boards, sheeting, sheets or films whether laminated or not, other than those manufactured from polyvinyl chloride, as the case may be.

The second proviso states that in relation to the exemption under the said Notification, the procedures set out in Rule 56A of the aforesaid Rules shall be followed. The appellants, therefore, contend that even if it is assumed that the Revenue is right in contending that it was entitled to duty on the intermediary product under the aforesaid two entries, the appellants would be entitled to a set off in respect of the duty paid thereon from that payable on the end product by virtue of the aforesaid Notification. This submission was sought to be countered on the ground that the Notification refers to paper and cotton fabric i.e., only the base product, and not to all products falling within Tariff Items 17(2) and 19(III). We cannot permit this contention to be raised for the first time before us as the Revenue has not come in appeal against the decision of the Tribunal, which held that Tariff Item 17(2) would take within its sweep treated papers. A fortiori the same would be the position in regard to Tariff Item 19(III). We have, therefore, not permitted the Revenue to raise this contention for the first time in the present proceedings by way of a reply to the contention canvassed on behalf of the appellants.

2. The High Court, however, took note of the fact that no contention had been raised before the Tribunal that the appellants should be permitted to meet the requirements of Rule 56A of the Central Excise Rules and, therefore, they cannot be permitted to avail of that benefit in a Writ Petition brought under Article 226 of the Constitution. That indeed was a technical view to take because if the appellants were entitled to the benefit of the Notification No. 71/71-C.E., dated 29th May, 1971, to deny that benefit on the technical ground of non-compliance with Rule 56A would tantamount to permitting recovery of double duty on the intermediary product. The circumstances in which the appellants did not pay the duty on the intermediary product before putting the same to captive consumption for producing that stage, the appellants contested the correctness of the classification and had, therefore, not paid the duty on the intermediary product. When it was found that they were liable to pay duty on the intermediary product and had not paid the same, but had paid the duty on the end product, they could not ordinarily have complied with the requirements of Rule 56A. Once the Tribunal took the view that they were liable to pay duty on the intermediary product and they would have been entitled to the benefit of the notification had they met with the requirement of Rule 56A, the proper course was to permit them to do so rather than denying to them the benefit on the technical ground that the point of time when they could have done so had elapsed and they could not be permitted to comply with Rule 56A after that stage had passed. We are, therefore, of the opinion that the appellants should be permitted to avail of the benefit of the notification by complying at this stage with Rule 56A to the satisfaction of the Department.

3. In the result, we allow Civil Appeal No. 1493/88 and remit the matter to the Collector of Central Excise with a direction to permit the appellants to comply at this stage with the requirements of Rule 56A of the Central Excise Rules and claim set off of the duty payable on the intermediary product by satisfying the Collector that the same was used in the manufacture of the end product on

which full duty had already been paid. On such satisfaction being recorded, the appropriate consequential orders would be passed.

4. In this view that we take in Civil Appeal No. 1493/88, Civil appeal No. 4171/84 does not survive and shall stand disposed of accordingly. In both the appeals, we make no order as to costs.