

Customs, Excise and Gold Tribunal - Tamil Nadu

D.P. Foam Pvt. Ltd. vs Commissioner Of Central Excise on 4 February, 1998

Equivalent citations: 1999 (106) ELT 544 Tri Chennai

ORDER T.P. Nambiar, Member (J)

1. This appeal is filed against the order passed by the Collector in Order No. 3/88, dated 27-7-1988. The appellants were paying duty on the uncovered pillows, uncovered cushions sheets and shreads. Thereafter the goods were removed to another unit and on these uncovered materials, coverings were made. The department contended that this is a further manufacturing activity and differential duty was demanded from the appellants on the activity of covering these uncovered pillows by adding value thereon. The department considered the covered pillows as a new product and demanded duty of Rs. 7,07,612.40. It is against this order the present appeal is filed by the appellants.

2. Shri P.C. Anand, Chartered Accountant appearing for the appellants relied upon the decision of the Tribunal in their Order No. 3744/96, dated 3-12-1996 in their own case. In para 8 of this order, the Tribunal has held as follows:

"8. We are in this appeal concerned with the terms of the Notification 108/73. This notification exempted all articles of polyurethane foam falling under erstwhile Tariff Item 15A(4) manufactured from waste or scrap of polyurethane foam, or from waste or scrap of articles of polyurethane foam, from the whole of the duty of excise leviable thereon. "Waste and scrap" is ordinarily understood as things which are of no use as such or are to be thrown away or recycled. The Deputy Collector held that shredding and 'C grade sheets used in the manufacture of pillows are useful parts, and that such articles having same characteristics as foam cannot be regarded as waste and scrap. That, of course, would be ordinary way of looking at "waste and scrap" but if the "waste and scrap" means only something which cannot be used or used only for recycling, the question of exempting articles made out of waste and scrap would not arise. Therefore, the expression "waste or scrap" used in the notification cannot be understood in the ordinary way. In this view, the decisions referred to earlier are not useful in deciding the applicability of the notification. Department has not controverted the contention of the appellant that the pillows are manufactured out of 'C grade sheets and shreadings. 'C Grade sheets are used to make the cover which is to be filled with shreadings. Therefore it is clear that shreadings used in the manufacture of pillow are important and significant part of the pillow, valuwewise or otherwise. We therefore hold that polyurethane pillows manufactured by the appellant and seized by the excise officers enjoyed the benefit of exemption under Notification 108/73. The fact that the appellant at one stage had chosen to pay duty on the uncovered pillows removed from the factory cannot override the applicability of the notification. Pillows manufactured by the appellant, uncovered or covered are articles manufactured from waste or scrap of polyurethane foam and as such benefit of Notification No. 108/73 as also Notification 11/74, dated 2-2-1974 would be available to the appellant.

He therefore, contended that the pillows after covering are not a different commodity. He pointed out that the uncovered pillows are not dutiable as they were exempt under Notification 108/73. It was therefore, pointed out that when the Tribunal held that uncovered pillows are not dutiable in

view of being exempted, the mere fact that they have already paid duty under a mistaken impression is not sufficient to hold further demand of duty by treating the covered pillows as a new product.

3. Heard Shri S. Murugandi, the learned DR. He reiterated the reasoning in para 16 of the impugned order wherein the Collector has held that the activities carried out by the appellants i.e. stitching of the covers, labelling and wrapping of the uncovered pillows amounted to manufacture and a new product has come into existence. He further pointed out that the appellants claimed exemption under Notification 69/71 which does not cover carry-cots.

4. We have considered the submissions made by both the sides. We find that as far as the pillows are concerned the decision of the Tribunal is very clear to the effect that the pillows which are manufactured out of shreds are exempted under Notification 108/73. The Tribunal held that shreddings as well as C grade sheets are waste and scrap. In the present case, uncovered articles like pillows are manufactured from sheets and shreddings and the above decision will apply to the facts of the present case which goes to show that these uncovered pillows themselves are exempt under Notification 108/73. When these themselves are exempt the question of paying duty again on these exempted goods on the ground that they are covered clothes does not arise in view of the fact that the characteristics of the pillows remain as that of pillow. Therefore, in terms of the above decision of the Tribunal demand of differential duty on these items are not legal. It was contended by the learned DR that carry-cots is another item which is involved in this case. The Chartered Accountant drew our attention to the order of the original authority at page 2 of the order wherein it is stated that carry-cots were manufactured out of duty paid cushions and the said cushions were inserted into the covering and the opening of the top side were stitched. He, therefore, stated that these are cushions stitched in a particular manner and therefore, these cushions themselves are manufactured from waste and scrap and no further duty can be charged.

5. The learned DR on the other hand stated that claim of exemption is made by the appellants in terms of Notification 69/71 wherein only sheets, sheetings, mattresses, quilts and the like, pillows, cushions and mats and others are mentioned. He, therefore, stated that carry-cots does not figure in the above said Notification as an exempted item.

6. We have considered the submissions made before us. It is seen from the impugned order itself that carry-cots are manufactured by stitching the cushions. In the above Notification, mattresses and the like are also indicated. Therefore, these carry-cots are also goods within the purview of mattresses and like. Further they are made of cushions and stitched. In this view of the matter above said exemption is applicable. In this view of the matter, we allow the appeal.