

Customs, Excise and Gold Tribunal - Delhi

Budge Budge Co. Ltd. vs Collector Of C. Ex. on 15 May, 1987

Equivalent citations: 1989 (42) ELT 609 Tri Del

ORDER

1. The main question for decision in this appeal is whether the appellants manufacturer precipitated activated coated chalk (activated calcium carbonate) is eligible to benefit of exemption under Notification No. 23/55-C.E., dated 29.4.55.

2. The present proceedings against the appellants are outcome of visit by the Central Excise Officers to the appellant's factory on 30.9.82 and detention of 325.580 M.T. of Calcium Carbonate of all varieties found in stock with them. After due investigation, a show cause notice dated 3/4-4-83 was served on the appellants alleging that had:-

(a) manufactured the excisable goods viz. precipitated Calcium Carbonate (Coated) known by them as ACC 03 falling under T.I.68 of Central Excise Tariff without obtaining a Central Excise Licence in form L 4 from 21.6.78 onwards as required under Section 6 of Central Excises and Salt Act, 1944 read with Rule 174 of Central Excise Rules, 1944.

(b) removed the excisable goods without determining the Central Excise duty due on the said goods prior to their removal as required under Rule 173-F of Central Excise Rules, 1944.

(c) removed 5671600 Kgs. of precipitated Calcium Carbonate (Coated) falling under T.I.68 totally valued at Rs.1,90,05,619.90 from their factory premises without payment of Central Excise duties leviable thereon as required under Rule 9(1) of Central Excise Rules, 1944.

(d) removed the said excisable goods from their factory premises without a cover of

(e) failed to account for the said excisable goods in statutory Central Excise records

(f) failed to file the classification list before removal of the said excisable goods w

(g) failed to file Price List before removal of the said excisable goods with proper of

and calling upon them to show cause why central excise duty amounting to Rs.15,20,449,77

3. Another show cause notice dated 12.1.84 was served by the Superintendent Central Excise Range IV Palghar demanding duty of Rs. 4545.73 on the quantity of 36879 Kgs. of coated chalk removed during the period 3.6.78 to 31.3.79. The appellants filed reply to the show cause notice denying the allegations. After personal hearing the Collector of Central Excise, Bombay-II held against the appellants and ordered as follows: -

"Confiscation of 263.250 M.T. of activated calcium carbonate. As the appellants failed to produce this quantity in terms of the bond executed by them, he appropriated a sum of Rs. 50.000A from the bank guarantee furnished by the appellant. He also ordered payment of Rs. 50.000/- as fine in lieu of confiscation of the above said quantity. He further ordered the confiscation of 17.150 M.T. of coated calcium carbonated valued at Rs. 64027.00 seized on 14.10.82 from the premises of M/s Mettur Heardsell Ltd. This was allowed to be redeemed on payment of fine of Rs. 10,000/- within three months from the date of receipt of the order or such extended period as may be allowed by him. He further ordered the appellants to pay Central Excise Duty at appropriate rate on the quantity of precipitated activated calcium carbonate (coated chalk) removed by them during 30.7.82 to 11.10.82. The show cause notice dated 4.4.83 according to this order was confirmed to this extent only. The demand for the period prior to 30.7.82 was held not sustainable by him. He also found that the notice of demand dated 12.1.84 issued by the Superintendent Central Excise Palghar not sustainable on the ground of limitation the same was withdrawn. He held in favour of the appellants as to the charge of suppression or mis-statement and he held this could not be levelled against the appellants and longer period of 5 years for demand of duty could not be invoked. In spite of this finding the Collector confirmed the demand for the period 30.7.82 to 11.10.82 on the strength of show cause notice dated 4.4.83 -based on Range Superintendent of Central Excise letter dated 30.7.82 informing the appellants that their product fall under T.I. 68 and directing them to take out Central Excise licence immediately. He also imposed a penalty of Rs.1 lakh. He further ordered that seized goods 263.250 M.T. seized from the factory are dutiable and Central Excise duty at appropriate rate has to be paid on the same at the time of removal of goods if not paid already at the time of provisional release."

4. Being aggrieved with this order the appellants filed this appeal to the Tribunal. It also appears that the prosecution has been launched against the appellants and on the request of the appellants and considering the hardship involved an early out of turn of hearing was granted to the appellants.

5. At the hearing of the appeal today Shri Ashok Grover, Advocate has appeared for the appellants and Smt. J.K. Chandar, JDR for the respondent. We have heard them and gone through the paper book. The main contention of Shri Grover is that only question involved is whether the appellants manufacture precipitated activated calcium carbonate (coated chalk) is eligible to benefit of exemption under Notification No. 23/55-C.E., dated 29.4.55. He submitted that if the goods to be held eligible to exemption under Notification nothing survives against the appellants and the whole order would deserve to be set aside. Relying on a decision of the Tribunal in Collector of Central Excise, Meerut v. Searsole Chemicals Ltd. reported in 1985 (21) ELT 343 (Tribunal), he submitted that the product did not involve manufacture and in any case it was eligible to benefit of exemption under the notification as held by the Tribunal in the aforesaid precedent. He submitted that the Collector was in error in holding that uncoated chalk is different from coated chalk and is a distinct product from the original one. He submitted that in view of the above said decision of the Tribunal on such a distinction benefit of exemption under the Notification could not be denied to the appellants. He submitted that in view of the precedent the order deserves to set aside in toto and appeal allowed.

6. Smt. J.K. Chandar, JDR in her submission generally defended the order of the Collector of Central Excise. Questioned about the precedent on which Shri Grover has placed reliance, she agreed that present appeal and the decision related to the same product. She agreed that according to the decision of the Tribunal for according benefit of exemption under the notification, no distinction can be made between coated and uncoated chalk (precipitated activated calcium carbonate). She however, maintained that under the Notification Sr.No.1 minerals, employed either as extenders, suspending agents or fillers or as diluents were eligible to benefit of exemption under Notification. In this case there was no material or proof that the appellants manufacture (precipitated activated calcium carbonate) i.e. coated chalk were put to these uses, and appellants can get benefit of the exemption under the notification only when they were able to satisfy that the product manufactured was put to use for these purposes. She submitted that this argument she was advancing because there was no occasion for the lower authorities to examine this aspect of the notification. Shri Grover, however, contended that in view of the above said decision of the Tribunal such an examination whether minerals were employed for the purposes set out in the notification was not called for and exemption should be granted irrespective of whether or not mineral specified in the notification were in fact used for the purpose specified therein or not.

7. We have carefully considered the submission made by the parties. For ease of reference material part of the notification is re-produced below: -

"In exercise of the powers conferred by Sub-rule (1) of Rule 8 of Central Excise Rules, 1944 the Central Government hereby exempts the following items from the whole of the duty leviable thereon under Section 3 of the Central Excise and Salt Act, 1944 (1 of 1944) namely:

1. Minerals, employed either as extenders suspending agents or fillers or as diluents, namely: -

Barytes, Bauxite, Bentonite, China clay, Celestine lime stone and chalk (including precipitated chalk) Fuller's earth, Gypsum, Mica, Silica, Asbestos, Talc and Slate."

In view of the above said decision of the Tribunal and as also Smt. Chandar agreement that the decision covers the appellants' product precipitated activated calcium carbonate (coated chalk), there can be no doubt that the product would be eligible for benefit of exemption under the Notification, but only when it fulfilled the other condition of Notification as to use as extenders, suspending agents or fillers or as diluents. Collector of Central Excise had no occasion to go into this aspect of the matter because he straightaway held that coated chalk cannot be eligible for benefit of exemption under the Notification. In our view straightaway denial may not be justifiable. The appellants in order to be eligible for exemption under the notification have to satisfy the lower authorities that their product (coated chalk) is used for the purposes specified in the notification i.e. minerals employed either as extenders suspending agents or fillers or as diluents. On their so satisfying the lower authority i.e. Collector of Central Excise, they shall be granted the benefit of exemption under the notification. If the appellants fail to satisfy about the use of their product in terms of the notification as set out above, to the extent they are not able to do so, they would be liable to pay duty on the portion in respect of which such proof is not available or adduced. The demand if any, would be subject to six months limitation preceding the date of show cause notice

dated 4.4.83 as according to the Collector of Central Excise, there was no suppression of facts or mis-statement on the part of the appellants. We do not agree with the Collector that merely because Superintendent had written a letter on 30.7.82 to the appellants that their product falls under Tariff Item 68 and asked them to take out a licence, they would be liable to pay duty from this date. In view of Collector's finding as to mis-statement, suppression of fact and the like and having regard to Section 11-A of Central Excise and Salt Act, 1944 and the issue of show cause notice on 4.4.83 the demand of duty from 30.7.82 cannot be justified or upheld.

8. As a result of the aforesaid discussion, it is held that the appellants manufacture precipitated activated calcium carbonate (coated chalk) would be eligible to benefit of exemption under Notification No. 23/55 on the appellants satisfying the lower authority that they have been using the minerals as extenders, suspending agents, fillers or as diluents. In view of this finding the impugned order, the demand of duty and penalty and confiscation thereunder are hereby set aside. The appellants shall be given opportunity by the Collector of Central Excise to satisfy him as to use of their product as extenders, suspending agents or fillers or as diluents. On their so satisfying complete exemption in respect of their product shall be given. If the appellants fail to satisfy about any portion of their product, duty on such portion subject however to six months limitation preceding the show cause notice as already set out above, shall be realised from the appellants. Collector shall do all this within a period of six months from the date of receipt of copy of this order by him.

9. The appeal is allowed in the foregoing terms.