IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Appeal No. E/673,685/2011-EX [DB]
[Arising out of Order-in-Appeal No. 44/COMMR/CEX//ADJ/STN/2010 dated 9.12.2010, passed by the Commissioner of Central Excise, Bhopal]

M/s. Jaypee Rewa plant
M/s Japee Bela Plant **...Appellants**
Vs.
CCE, Bhopal **....Respondent**

Appearance:

Sh. Rahul Tangrick, Advocate for the Appellant
Sh. Amresh Jain, DR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Date of Hearing: 08.11.2016
Date of Pronouncement: 15.02.2017
FINAL ORDER NO. 50865-50866/2017-Ex(DB)

Per Ashok K. Arya:

The appellants namely M/s Jaypee Rewa Plant and M/s Jaypee Bela Plant have filed these two appeals respectively against Orders-in-Original No. 42 to 44/2010 and No. 39 to 41/2010 both dated 09.12.2010, passed by Commissioner, Central Excise and Customs, Bhopal.

1.1 The Order-in-Original 42 to 44/2010 dated 09.12.2010 confirms the demands of Central Excise duty of Rs. 2,30,85,909/-, Rs. 2,16,49,755/- and Rs. 5,15,33,153/- along with interest for recovery on cement cleared for export to Nepal during the cumulative period of March, 2008 to November, 2009 against M/s.

Jaypee Rewa Plant under Section11A of the Central Excise Act, 1944.

1.2 The Order-in-Original No. 39-41 confirms the demand of Central Excise duty along with interest for recovery under Section 11A of Central Excise Act, 1944 against other appellant namely M/s. Jaypee Bela Plant.

2. The appellants have been represented by ld. Advocate Shri Rahul Tangrick and Revenue has been represented by the ld. AR, Shri Amresh Jain.

3. The ld. Advocate for both the appellants based on the appeal memoranda *inter alia* mainly submits as follows:

i. Appellant has correctly discharged duty by availing exemption of Sr. No. 1A of Notification No. 04/2006-CE dated 1.3.06.

ii. In terms of the Section 5A of Central Excise Act, 1944, Notification No. 4/2006-CE dated 1.3.2006 has been issued by the Central Government exempting the goods in terms of the conditions prescribed therein.

iii. In present case these facts are not in dispute i.e. (i) consignments of cement were cleared by noticee(s) in gunny bags of 50 Kgs i.e. cement was cleared in packaged form [para 3, 7 & 12 of Show Cause Notice] (ii) MRP/RSP was duly affixed/marked on the gunny bags [para 3, 7 & 12 of Show Cause Notice].

iv. Plain reading of the Sr. No. 1A of the its explanation, Notification No. 4/2006-CE dated 1.3.2006 indicates that following conditions need to be satisfied to claim the benefit under it: (i) Goods should not get covered in Sr. No. 1 (ii) goods must be cleared in packaged form (iii) with retail sale price within band indicated therein.

v. Admittedly, the plants of appellant are not mini cement plant within meaning of the present notification no. 4/2006-CE (Supra). Therefore, appellant are outside the purview of Sr. No. 1 of the notification. In present case, admittedly, clearances of cement were made by appellant in 50 Kgs gunny bags. The expression "packaged form" has neither been defined under the notification nor under Central Excise Act 1944 or rules made there under. However Section

2(b) of the Standards of Weights and Measures Act, 1997 defines "commodity in packaged form" which means commodity packaged, whether in any bottle, tin, wrapper or otherwise, in units suitable for sale, whether wholesale or retail." Rule 2(l) of Standards of Weight and Measures (Packaged Commodities) Rules, 1977 [PC Rules in short] defines "pre-packed commodities" means a commodity, which without the purchasers being present, is placed in a package of whatever nature, weather sealed or opened, so that the commodity therein has a pre-determined value and includes those commodities which could be taken out of package for testing or examining or inspecting the commodity.

vi. Explanation 2 to the notification no. 4/2006-CE dated 1.3.2006 has given inbuilt specific definition of Retail Sale Price. It has been defined as under:
"retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price so printed is the sole consideration for the sale.

vii. In these appeal cases, cement were sold/exported by appellants in 50 Kgs gunny bags i.e. packaged from by declaring & affixing MRP on the bags. It is no body's case that price was not printed on the bags & price charged by the appellants from the buyers were not the maximum price at which cement was sold to the buyers & MPR printed on the bags were not the sole consideration for sale & export. Therefore, RSP declared by appellants duly falls within ambit & scope of RSP as defined in Explanation 2 to the notification no. 4/2006-CE dated 1.3.2006.

viii. Thus, all the conditions to claim benefit to Sr. No. 1A i.e. (i) Goods should not get covered in Sr. No. 1(ii) goods must be cleared in packaged form (iii) with retail sale price within band indicated therein stand satisfied by the appellant. Thus benefit of this Sr. No. has correctly been claimed by appellant.

3.1 Ld. Advocate for the appellants further submits as below:

i. Without prejudice & in any case benefit of Sr. No. 1C of Notification no. 4/2006-CE dated 1.3.3006 cannot be denied to the appellant:

a. Sr. No. 1C & relevant portion of explanation to the notification no. 4/2006-CE dated 1.3.2006 are being reproduced as under:

1C	252329	All goods, whether or not manufactured in a mini cement plant, not covered in S.No. 1B, other than those cleared in packaged form;	14% or Rs 400 per tonne, whichever is higher	-

Explanation.- For the purposes of S. Nos. 1, 1A, 1B and 1C,-

2. "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, omission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price so printed is the sole consideration for the sale:

Provided also that where the retail sale price of the goods are not required to be declared under the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, and thus not declared, the duty shall be determined as is in the case of goods cleared in other than packaged form;

b. Twin conditions which need to be satisfied to claim benefit of Notification 1C are that (i) Goods not covered in SR. No. 1b (ii) Goods must be other than those cleared in packaged form.

ii. In alternative, benefit of Sr. No. 1C of the exemption notification would be available to the appellant.

iii. In no case Appellant are liable to pay duty as per tariff rate.

3.2. The appellant relies on following case laws:

i. Commissioner of C. Ex., Hyderabad-III Vs. Sagar Cements Ltd. 2010(256) E.L.T. 616 (Tri.-Bang.).

ii. Alwar Lamps Pvt. Ltd. Vs. Commissioner of Central Excise, Jaipur 2004(166) E.L.T. 200 (Tri.-Del.).

4. The ld. AR Shri Amresh Jain reteriates the findings given by the lower Revenue authorities in the impugned Orders-in-Original.

5. We have carefully considered the facts of the case, and submissions of both sides along with the case laws cited.

6. These appellants are claiming benefit of Notification No. 4/2006-CE dated 1.3.2006 either under its serial no. 1A or under serial no. 1C. The appellants plead that they fulfilled the necessary conditions to claim the benefit against serial No. 1A. Alternatively, the appellants plead that the benefit of Serial No. 1C of the Notification No. 4/2006-CE (supra) is available to them. Twin conditions which need to be satisfied to claim benefit of Notification Serial No. 1C are that (i) Goods not covered in SR. No. 1B (ii) Goods must be other than those cleared in packaged form. The appellants claim that in no case they are liable to pay duty as per tariff rate.

6.1 On the other hand, the Revenue claims that the appellants are manufacturing the goods both for the Indian market as well as for export to Nepal. For the Indian market, the appellants clear their manufacture of Cement in package form of 50 Kg bags in interstate trade after paying duty on MRP basis as per Sr. No. 1A of the notification 4/2006-CE (Supra). In the case of exports of the same goods to Nepal by the appellants, the Revenue mentions that the appellants are again paying duty on MRP basis as per Serial No. 1A of the Notification No. 4/2006-CE (Supra); MRP is printed by the appellants assessee on Cement bags as per provisions of Standards of Weights & Measures Act (SWMA), 1976 and the Rules made thereunder.

6.2 However, SWMA (Standard of Weights & Measures Act, 1976) and the Rules made thereunder are applicable only to the goods sold within the country and not to goods exported out of India. The Revenue claims that since the provisions of Standards of Weights and Measures Act, 1977 and the Rules made thereunder are not applicable to the goods for export, the benefit of Notification No. 4/2006-CE (Supra) will not be applicable to the goods namely Cement exported to Nepal by the appellants. When the provisions of Standards of Weight and Measures Act (SWMA), 1996 and the Rules made thereunder are not applicable to export goods and therefore, RSP(MRP) is not required to be printed on such packages of cement exported to Nepal, the appellants assessee, even when they print the MRP/RSP on their cement bags exported to Nepal, the said goods (exported to Nepal) are not entitled to the benefit of Notification No. 4/2006-CE. The appellants also admit that there is no statutory requirement to declare sale price (RSP/MRP) on the cement bags meant for export to Nepal.

6.3 From the above discussion, it is clear that Cement Packages exported to Nepal are not covered by the provisions of Standards of Weights and Measures Act, 1976 and the Rules made thereunder.

In this regard, the adjudicating authority in both the impugned orders inter alia observe as under:

> "16…it is now clear that the export goods do not attract the provisions of the Standards of Weights and Measures Act, 1976 or rules made there-under. Thus, when the provisions of the Standards of Weights and Measures Act are not applicable to export goods, the benefit of exemption granted at S.No. 1 to 1C of Notification No. 4/2006-CE dated 01.03.2006 would also not be applicable to them because it is applicable only to those cases where the provisions of Standards of Weights and Measures Act, 1976 or the Rules made there under apply. The assessee's contention that since they had declared RSP on the packages of cement exported to Nepal, they are entitled to the benefit of concessional rate of duty as per S.No. 1A of the Notification 4/2006-CE dated 1.3.2006 is not tenable because no such exemption is available vide the said notification. Proviso three to explanation 2 given for S.No. 1 to 1C of the Notification No. 4/2006-CE makes it further clear that the concessional rate of duty under this notification is available to the goods on which the provisions of Standards of Weights and Measures Act, 1976 or the rules made there-under are applicable…."

6.4. The Adjudicating authority in both the impugned orders further, observes that in these cases.

" the goods are being exported to Nepal where they are sold in Nepalese currency and, therefore, printing of RSP in Indian Rupees on packages has no relevance at all."

6.5 In the light of above discussions, the benefit of the Notification No. 4/2006-CE (Supra) is not available to the subject goods, in case of both the appellants. Consequently, there is no reason to interfere with the impugned orders. In the result, both the appeals are hereby dismissed.

[Pronounced in the open court on 15.02.2017]

(Justice Dr. Satish Chandra)
President

(Ashok K. Arya)
Member (Technical)

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