EAGLE FLASK INDUSTRIES LTD. A

v.

THE COMMISSIONER OF CENTRAL EXCISE, PUNE

SEPTEMBER 2, 2004

[ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.] B

Central Excise Rules, 1944 :

Rules 174 and 174-A—Plastic items falling under Chapter Headings 3924.90 and 2909.6—Exemption Notifications Nos. 53/88 dated 1.3.1988 and 11/88 (NT)-CE dated 15.4.1988—Assessee not filing classification/ declaration required under the Notifications—Claim for exemption—Held, for availing benefits under an exemption notification, the conditions have to be strictly complied with—The relevant provision makes it clear that where goods are chargeable to nil rate of duty or where exemption from whole of excise duty leviable is granted, manufacturer is required to make a declaration and give the undertaking as specified—Since declaration and undertaking were not submitted by assessee, the Tribunal was right in holding that exemption from operation of r.174 was not available to it—Central Excise Act, 1944. C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4647 of 1998. E

From the Judgment and Order dated 8.5.98 of the Central Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. E/1009/1991-C in F.O. No. 364 of 1998-C.

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U.A. Rana, Arvind Kumar, Madhup Singhal and Sandeep Kharel for M/s. Gagrat & Co. for the Appellant.

Anoop Chowdhury, Rupesh Kumar, P. Parmeshwaran and B. Krishna Prasad for the Respondent.

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The following Order of the Court was delivered :

ARIJIT PASAYAT, J. : The appellants assail correctness of the order passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (in short 'CEGAT'). In the appeal before the CEGAT, the appellants H

had challenged a duty demand of Rs. 14,95,893 and penalty of Rs. 5,000, as imposed by the Adjudicating Authority and confirmed by the Collector, Central Excise and Customs (Appeals). CEGAT dismissed the appeal.

Background facts are : according to the appellants, they are engaged in the manufacture of articles of plastic i.e. Plastic insulated wares and vacuum flasks. They had two factories, one at Talegaon and the other at Chinchwad. The former one was considered to be the main factory. It was claimed that during the period of dispute, i.e. from 01.03.1990 to 21.08.1990, major portion of the articles manufactured by them in terms of value were exempt from Central Excise Licensing Control under Rule 174-A of the Central Excise Rules, 1944 (in short 'the Rules'). Since all the goods manufactured in their main factory were fully exempt from duty during the relevant period, only a minor portion of production was carried out in the Chinchwad factory. A show cause dated 28.08.1990 was served by the Central Excise authorities requiring them to show cause as to why duty shall not be levied and penalty imposed for failure to take out L-4 licence required for the manufacture of excisable goods falling under Chapter headings No. 3924.90 (Casserole) and 3909.60 (Rigid Polyurethene Foam) falling during the relevant period and for the failure to file the list of excisable goods. It was alleged that there was failure to determine the duty liability and also that they had not maintained accounts of the excisable goods. They were called up to show cause why duty should not be demanded and penalty should not be imposed for contravention of various provisions of the Central Excise Act, 1944 (in short 'the Act'). The appellants took the stand that since the products manufactured were chargeable to nil rate of duty and since they were also exempted from Licensing Control under Notification 11/88 (NT)-CE dated 15.04.1988, there was no liability or requirement on their part to obtain L-4 licence. It was further submitted that the Superintendent of Central Excise had been informed about the aforesaid aspects by letter dated 04.04.1990. As regards the Rigid Polyurethene Foam is concerned, the appellants claimed that the said item was non-excisable, as held in the assessee's own case for an earlier period. As regards the manufacture of goods at Chinchwad factory, the appellants took the stand that the said factory was a subsidiary unit of their main factory and all the materials required for the manufacture of goods were supplied by the main factory and the sales were also effected from the main factory. The Adjudicating Officer held that merely because exemption was granted under certain Notification, that does not make the product a non-excisable item even when the item was fully exempt. It was, therefore,

obligatory on the part of the appellants to follow the requisite procedures before manufacturing goods at the Chinchwad factory. As regards the claim that the appellants were covered by notification No. 11/88 (NT)-CE dated 15.4.1988, the adjudicating officer, found that the appellants had not complied with the requirements, as contained in the Notification. He also found that the appellants had started the manufacturing in the premises of M/s. Top Plastics Pvt. Ltd. right March, 1990 at Chinchwad even before the aforesaid M/s. Top Plastics Pvt. Ltd. had applied for cancellation of their licence on 21.08.1990. He also noted that the appellants had obtained the L-4 licence only on 28.03.1990. Since they have not filed the prescribed declaration under Notification No. 11/88, they were not exempt from the operation of Rule 174 of the Rules. It was also held that appellants had carried out manufacturing activities without following the requisite procedures and therefore were not entitled to exemption under Notification 53/88 dated 01.03.1988. The demand of duty was confirmed and penalty was imposed. In appeal, the Collector (Appeals) confirmed the order. He found that both types of products manufactured by the appellants were excisable. Before the CEGAT, it was contended that so far as the casseroles are concerned, exemption notification 53/88 dated 01.03.1988 clearly allowed exemption of the said item. No classification/declaration by the present appellants M/s. Eagle Flask Industries was required to be filed, since the management of the Chinchwad factory where casseroles were being manufactured was under M/s. Top Plastics Pvt. Ltd. It was highlighted that though initially L-4 licence was taken, cancellation was requested subsequently. It was submitted that the non-filing of declaration under Notification 11/88 was only, at the most, a procedural lapse and should not have resulted in levy of substantial tax liability.

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The respondent before the CEGAT supported the orders of the Adjudicating Officer, as confirmed by the appellate authority. The CEGAT, on analysis of the factual position, came to a definite finding which was not disputed by the appellants that they had failed to comply with the requirement of submitting declaration under Notification 11/88. That being so, the orders passed by the departmental authorities were confirmed.

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In support of the appeal, learned counsel for the appellant submitted that when the items were exempt from duty, there was consequential exemption from licensing control. In any event, mere lapse of non-submitting a declaration in terms of Notification 11/88 does not dis-entitle the assessee from the benefits otherwise available under the Notification.

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A Learned counsel for the respondent supported the judgment of the CEGAT.

We find that Notification 11/88 deals with exemption from operation of Rule 174 to exempted goods. The Notification has been issued in exercise of powers conferred by Rule 174-A of the Rules. *Inter-alia* it is stated therein B that, where the goods are chargeable to nil rate of duty or exempted from the whole of duty of excise leviable thereon, the goods are exempted from the operation of Rule 174 of the Rules. The goods are specified in the Schedule to the Central Excise Tariff Act, 1985 (in short 'the Tariff Act'). The Proviso makes it clear that where goods are chargeable to nil rate of duty C or where the exemption from the whole of the duty of excise leviable is granted on any of the six categories enumerated, the manufacturer is required to make a declaration and give an undertaking, as specified in the From annexed while claiming exemption for the first time under this Notification and thereafter before the 15th day of April of each financial year. As found by the forums below, including CEGAT, factually, the declaration and the D undertaking were not submitted by the appellants. This is not an empty formality. It is the foundation for availing the benefits under the Notification. It cannot be said that they are mere procedural requirements, with no consequences attached for non-observance. The consequences are denial of benefits under the Notification. For availing benefits under an exemption E Notification, the conditions have to be strictly complied with. Therefore, CEGAT endorsed the view that the exemption from operation of Rule 174, was not available to the appellants. On the facts found, the view is on *terra firma*. We find no merit in this appeal, which is, accordingly, dismissed.

R.P. Appeal dismissed.