
(1988) 04 DEL CK 0013

In the Delhi High Court

Case No : Order No's. 338 to 341/88-C, in Appeal No's. E/2886/83-C, 439/87-C, E/1026/87-C and E/1916/87-C

Raman Boards Ltd.

APPELLANT

Vs

Collector of C. Ex.

RESPONDENT

Date of Decision : 14-04-1988

Acts Referred:

Citation : (1988) 18 ECR 478

Hon'ble Judges : V.P. Gulati, J; S.D. Jha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.P. Gulati, Member (T)

1. These appeals are against the orders of the Collector of Central Excise (Appeals), Madras. Three of these have been filed by the appellants, M/s. Raman Boards Limited, Mysore, while one has been filed by the Revenue. There is a common issue involved in all these appeals and Therefore are being taken up together for disposal.

2. Brief facts of the case are that the appellants manufactured goods falling under Tariff Item 17 and in respect of their clearances during 1981-82 and 1982-83 have claimed the benefit of Notification No. 89/80-C.E. Initially they claimed benefit under Notification No. 70/76-C.E. Later, however, they claimed that since they were eligible also for the benefit of Notification No. 89/80 which was more beneficial to them, they should be given the benefit of the said notification and they voluntarily remitted the amount of duty benefit which was claimed in terms of Notification No. 70/76-C.E. For proper appreciation of the fact, the relevant portions of the two notifications are reproduced below :

"In supersession of Notification No. 24/74-C.E., dated 1-3-1974, straw board and mill board, falling under sub-Item (2) of Item No. 17, taken together up to a quantity specified in Column (1) of the Table hereto annexed, cleared by any

manufacturer for home consumption during any financial year, are exempt from so much of the duty of excise livable thereon, as is in excess of the duty specified in the corresponding entry in Column (2) of the said Table :

TABLE * * * * * Provided that.....

Provided further.....

2. Nothing contained in this notification shall apply to a manufacturer of paper board who avails of the exemption under the notifications of the Government of India, in the Ministry of Finance (Department of Revenue) No. 80/80-C.E., dated 19-6-1980 or No. 89/80, dated the 19th June, 1980."

[Notification 70/76-C.E., dated 1-3-1976 as amended]

"Partial exemption to paper or paperboard in respect to first clearances of three hundred tonnes :- In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts paper and paperboard (other than converted types of papers and paperboard) falling under Item No. 17 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), in respect of the first clearances of such paper and paperboard up to a total quantity not exceeding three hundred tonnes cleared on or after the first day of April in any financial year by or on behalf of a manufacturer, from one or more factories, from so much of the duty of excise livable thereon as is excess of twenty per cent ad valorem :

Provided that the total quantity of clearances of such paper and paper board from any factory, for home consumption by or on behalf of one or more manufacturers, at the reduced rate of duty as specified in this notification shall not exceed three hundred tonnes in any financial year.

2. The exemption contained in this notification shall not be applicable to a manufacturer -

(i) If the total quantity of clearances of such paper and paperboard, if any, by him or on his behalf from one or more factories during the preceding financial year, had exceeded three hundred tonnes; or

(ii) who avails of the exemption under the notifications of the Government of India in the Ministry of Finance (Department of Revenue and Insurance or Department of Revenue) or Department of Revenue and Banking as the case may be, No. 70/76-C.E., dated 16-3-1976.....

3.

4.

5.

[Notification No. 89/80-C.E., dated 19-6-1980 as amended]

The original authority held that inasmuch as the appellants had for some time availed of the benefit of Notification No. 70/76-C.E. in view of the condition in para 2 of the Notification No. 89/80-C.E., the appellants were disentitled to the benefit under Notification No. 89/80-C.E. The lower appellate authority also took the view that inasmuch as the appellants had once availed of the benefit of Notification No. 70/76-C.E. in a financial year in view of the specific bar in para 2 of Notification No. 89/80 they were debarred from availing of the benefit of Notification No. 89/80-C.E. in the same financial year. In respect of the clearances during the year 1982-83, the Collector (Appeals) allowed the appellants plea that inasmuch as they had not availed of the benefit of exemption Notification No. 70/76-C.E. in that year clearances made during 1982-83 were entitled to the benefit of Notification No. 89/80-C.E.

3. The learned Consultant for the appellants pleaded that there was no bar to the appellants claiming benefit under any one of the two notifications and it should make no difference to Revenue so long as the appellants availed of the benefit of only of the two notifications. He cited the case of 1988 (16) ECR 440 . This case law, we observe, is not relevant to the issue before us.

4. The learned JDR for the department reiterated the arguments set out in the adjudicating authority's order and stated that he has no further submission to make in this regard.

5. We observe it is not in dispute that the appellants could avail of the benefit of either of the two notifications and that they satisfied the criterion for eligibility set out in these two notifications so far as the nature of the goods manufactured and the quantum of goods cleared are concerned. The only point in dispute is whether the appellants having availed of the benefit of Notification No. 70/76-C.E. could in view of the specific stipulation in para 2 of Notification No. 89/80 that the exemption under this notification shall not be available to the manufacturer who availed of the benefit under Government of India, Ministry of Finance, Department of Revenue Notification No. 70/76-C.E., could be allowed to opt for the benefit of the Notification No. 89/80-C.E. The appellants plea is that since they have refunded the amount availed of as duty benefit in terms of Notification No. 70/76-C.E. voluntarily, they should be held to be eligible for the benefit of Notification No. 89/80. The Revenue, however, is aggrieved of the appellate order inasmuch as the appellants have availed of the benefit under Notification No. 70/76-C.E. in terms of para 2 of the Notification No. 89/80, they should not have been allowed the benefit of this notification for the year 1982-83 by the Collector (Appeals). Learned JDR, however, had no case law to cite as to how the appellants should be taken to have been debarred from availing of the benefit of Notification No. 89/80 for all time since they had availed of benefit of Notification No. 70/76.

6. We observe from the Grounds of Appeal filled by the Revenue (Appeal No. E/1916/87-C) that the ground taken is that the appellants were debarred from the benefit of Notification No. 89/80 inasmuch as they had availed of the benefit

under Notification No. 15/78. No arguments, however, in this regard, were adduced by the revenue nor any relevance of the notification in this context for the purpose of eligibility of the benefit under Notification No. 89/80 has been shown. In view of this, we find that this ground of appeal has no relevance to the issue before us.

7. The question that arises for our consideration is that if the appellants initially claimed the benefit under Notification No. 70/76, can they be taken to have been debarred from claiming the benefit under 89/80 at a alter date ? The reading of the two Notifications 70/76 and 89/80 shows that a manufacturer can avail of concession under one of the two notifications. Choice of claiming the benefit under either of the two notifications is with the manufacturer depending upon which of the two notifications is beneficial to him. We cannot read from the wording of the two notifications that once a manufacturer has opted for benefit under, one of the two notifications, say 70/76, he is estopped from making a claim under the other Notification, 89/80 or vice versa subject, of course, to his claiming the benefit under only one of the two notifications. There is nothing in these notifications which warrants that the benefit in respect of the two notifications is to be availed of financial year wise. We Therefore find no bar in law in the appellants claiming benefit under Notification No. 89/80 so long as the other criteria set out in the notification is satisfied and the relief under that notification alone is claimed. So long as the appellants have filed the refund claim within time the benefit of notification within the limitation period cannot be denied. The refund, of course, will have to be limited to the amount after making the adjustment of the relief already enjoyed by them in terms of Notification No. 70/76. In view of the above, we allow the manufacturer assessed's appeals. In view of what we have stated above, we find no merits in the appeal of the revenue and dismiss the same. The cross-objection filed by the assesseds is in the nature of comments and it is Therefore not maintainable.