

(2004) 07 SC CK 0008

In the Supreme Court Of India

Case No : Civil Appeal No's. 6581 and 6635 of 2002

Rollatainers Limited

APPELLANT

Vs

Commissioner of Central Excise, Delhi-III

RESPONDENT

Date of Decision : 29-07-2004

Acts Referred:

Central Excise Rules, 1944 — Rule 174(3)

Central Excises and Salt Act, 1944 — Section 11A(1), 2

Citation : (2004) 4 CompLJ 104 : (2004) 95 ECC 329 : (2004) 115 ECR 609 : (2004) 170 ELT 257 : (2004) 6 JT 107 : (2004) 6 SCALE 343 : (2004) 11 SCC 203 : (2004) 3 SCR 216 Supp

Hon'ble Judges : N. Santosh Hedge, J;A. K. Mathur, J

Bench : Division Bench

Advocate : A.R. Madhav Rao, Alok Yadav, Vishwanath Shukla and V. Balachandran, for the Appellant; B. Datta, Additional Solicitor General, Dileep Tandon, P. Parmeswaran and B. Krishna Prasad, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur,J.

1. Both these appeals arise out of the common order of the Customs Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as the 'Tribunal') dated June 7,2002. Therefore, they are disposed of by this common order.

2. Brief facts which are necessary for the disposal of both appeals are as under. M/s.Rollatainers Limited (hereinafter referred to as the 'appellant'), is a limited company registered under the Companies Act, 1956. The appellant is engaged in manufacture of various products in seven of its factories situated in different premises, each of them duly and separately registered with the Central Excise Department. Out of the seven factories, two factories which are relevant for the purpose of these appeals are: (i) Paper Board Factory and (ii) Specialty Paper Factory. The paper board division is situated in Shed No.1, Narela Road, Kundli and engaged in manufacture of duplex board independently with its own set of

plant and machinery, staff and workers, raw material and utilities like electricity, water etc. Specialty Paper Factory is situated in Shed No.3, Narela Road, Kundli and engaged in manufacture of paper independently with its own set of plant and machinery, staff and workers, raw material and utilities like electricity, water etc. Prior to May, 1998, the Specialty Paper Factory was situated at Dharuhera with accumulated stock of finished goods. The appellant decided to transfer such finished stock of specialty paper factory to paper board factory and dispose of the accumulated stock of finished goods under the Central Excise registration issued to paper board factory. The ground plan of the paper board factory prior to May, 1998, showed shed no.3 as a godown for storage of its raw material, namely waste paper. Thereafter, the ground plan was amended in May, 1998, to show the specialty paper factory in shed no.3 for storing the finished goods manufactured at Dharuhera and clearing them on payment of duty. Accordingly, classification list was also filed for the purpose of clearing the stock manufactured at Dharuhera. Subsequent to erection of the plant and machinery of specialty paper factory shifted from Dharuhera to shed no.3, Narela Road, Kundli and manufacture of paper in such separate premises by separate staff and workers who were earlier employed at Dharuhera, were engaged and the appellant applied for Central Excise registration as provided under Rule 174(3) of the Central Excise Rules, 1944. No portion of the manufacturing process of paper board factory was ever carried on in shed no.3 wherein exclusively specialty paper factory operations were carried out. The registrations issued to the paper board factory and the specialty paper factory were premises specific as stipulated under Rule 174(3) which reads as under:

"Every registration certificate granted shall be in the specified form and shall be valid only for the premises specified in such certificate."

3. The registration carried out certain conditions also like, that it is valid only for the premises and purposes specified in the schedule and for no other purposes and premises; it is not transferable and no correction will be admissible in the certificate unless attested by the Superintendent, Central Excise and the certificate shall remain valid till the holder carries on the activity for which the certificate has been issued or surrenders the same. Therefore, both the factories were granted separate registration. It was also pointed out that no manufacturing processes pertaining to the manufacture of paper board was carried on in the shed no.3 for which specialty paper factory was granted registration. Only manufacturing processes for manufacture of paper were carried on in shed no.3. It was also stated that both the factories had their separate entrances and are separated by a clear passage of 10 ft.

4. The Central Excise Department issued a notification being Notification 6/2000-Central Excise dated March 1,2000 and as per serial No.77 of the aforesaid notification, paper and paperboard or articles made therefrom in a factory is chargeable to 'nil' rate of duty subject to condition no.15 of the notification that paper and paperboard or articles made therefrom manufactured, starting from

the stage of pulp, in a factory, and such pulp contains not less than 75% by weight of pulp made from materials other than bamboo, hard woods, soft woods, reeds (other than sarkanda) or rags and it was specifically mentioned that the exemption shall apply only to the paper and paperboard cleared for home consumption from a factory. Therefore, the aforesaid exemption was availed of by the appellant's factories.

5. But the trouble started on March 19, 2001 when individual show cause notice was issued to the factories of the appellant objecting to the availing of the aforesaid concession by each of the factories. The basis of issuance of the show cause notice was on the ground that both the factories are in the common premises and common balance-sheet is maintained and owned by the same company. The issue was adjudicated by the Commissioner, Central Excise, Delhi-III and duty was claimed in sum of Rs.50,25,117.00 u/s 11A(1) of the Central Excise Act, 1944 and penalty of Rs.5 lacs. Aggrieved against this order, two appeals were preferred before the Tribunal and the Tribunal affirmed the order. Hence, the present appeals by way of special leave.

6. The question that arises for consideration in both these appeals is whether both these factories are one or they are separate. The Tribunal by its order dated June 7, 2002, affirmed the order of the lower authority and came to the conclusion that they are one and accordingly, affirmed the duty as well as the penalty.

7. There is no two opinion that both the factories are near to each other and it is owned by the same owner and the common balance-sheet is maintained. But, by this can it be said that both the factories are one and the same ? The definition of the 'factory' as defined in Section 2(e) of the Central Excise Act, 1944, reads as under :

" (e) 'factory' means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on;"

8. Simply because both the factories are in the same premises that does not lead to the inference that both the factories are one and the same. In the present case, from the facts it is apparent that there is no commonality of the purpose, both the factories have a separate entrance, there is a passage in between and they are not complimentary to each nor they are subsidiary to each other. The end product is also different, one manufactures duplex board and the other manufactures paper. They are separately registered with the Central Excise Department. The staff is separate, their management is separate. It is also not the case of revenue that end product of one factory is raw material for the other factory. From the above facts it is apparent that there is no commonality between the two factories, both are separate establishments run by separate managers though at the apex level it is maintained by the appellant company.

There are separate staff, separate finished goods. Simply because both the factories may have common boundaries that will not make it one factory. Accordingly, we are of the opinion that the view taken by the Tribunal does not appear to be well-founded and likewise, the view taken by the Commissioner, Central Excise. Accordingly, we allow both these appeals, set aside the order of the Tribunal passed on June 7, 2002 as well as the order passed by the Commissioner, Central Excise, New Delhi-III on September 28, 2001 in both the appeals. No order as to costs.