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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-09-1997

Reported in : (1997)(92)ELT696TriDel

Appellant : Collector of C. Ex.

Respondent : Ga

Judgement :
1. The captioned appeal has been filed by the Collector of Central Excise, New Delhi being aggrieved by the order of the Collector (Appeals) holding that "Rule 57F(3) is to be harmoniously construed and cannot be interpreted at tangent to Rules 12 and 13. The Assistant Collector observed that the goods are being exported by M/s. Dolphin Sales (P) Ltd. but despite their duty liability under the DEEC Scheme and it is they who are entitled to receive the export sale proceeds.

Therefore in this case, the refund claim is admissible only to that manufacturer who exports the goods directly and not to those who export through merchant exporters. I observe that the identical issue had come up before me and vide my orders in Appeal cited above, I have already held that the view taken by the Assistant Collector is not sustainable in law and on facts. Following the same reasoning given in my aforesaid Order-in-Appeal Nos. 442 to 444-C.E./DLH/91, dated 24-4-1991, the present two appeals are also disposed of." 2. The facts of the case are that the respondents are engaged in the manufacture of Aquadent flouride tooth paste and had filed refund claim of Rs. 11,59,738.42 on 5-6-1991 under Notification 85/87-C.E., dated 1-3-1987 for the unutilised credit in their RG

23A Part-II; that the respondents are supporting manufacturer in Part-B of the DEEC book issued to M/s. Dolphin Sales (P) Ltd. with whom they had entered into an agreement for manufacture and supply of the tooth paste for the subsequent export by M/s. Dolphin Sales (P) Ltd. had imported raw materials free of duty vide Customs Notification 116/88, dated 30-3-1988 and passed on to the supporting manufacturer; that the respondents themselves had affected 100% export under bond of the finished goods as there was no clearance for home consumption; that the respondents claimed refund of the credit lying in the RG 23A Part II under Rule 57F(3); that the respondents submitted photocopies of AR4A's indicating the final proof of export alongwith the shipping bills which indicates that the finished goods were finally exported by M/s. Dolphin Sales (P) Ltd. The Assistant Collector rejected the refund claim. In appeal the Collector (Appeals) allowed the refund claim of the respondents.

3. Shri Ram Sharan, ld. JDR appearing for the department submits that the respondents had sought to take dual benefit by meeting the export obligation under DEEC as well as of Modvat credit on inputs, which is not permissible since the inputs relief in respect of goods exported under bond was envisaged in terms of para 246(1) of import policy 1989-91 which read as under :- "No drawback will be admissible on the products exported under this scheme in respect of any duty exempt materials allowed against such exports. In respect of any other duty paid materials whether imported or indigeneous used in such products, a suitable brand rate may be fixed by the Ministry of Finance (Directorate of Drawback) on request by the registered exporter concerned". It was argued by the ld. JDR that first proviso to Sub-rule (3) of Rule 57F provides that credit of specified duty in respect of inputs used in the final products cleared for export under bond is allowed to be utilised towards payment of duty of excise on similar final product cleared for home consumption on payment of duty and where for any reason, such adjustment is not possible, by refund to the manufacturer subject to the safeguards, conditions and limitations as specified in Notification No. 85/87-C.E., dated 1-3-1987 issued under the said rule.

4. The learned JDR submits that there are two provisions which deal with export of goods manufactured by Central Excise licence; that one of the Rules is Rule 12

which deals with the rebate of Central Excise on goods exported and obviously it is the manufacturer who is entitled to claim such rebate; that similarly there is Rule 13 which provides for export of goods under a bond and here also the manufacturer can have such exemption of the Central Excise duty subject to the observance of the procedure laid therein; that it may be observed that both Rules 12 and 13 envisage that a manufacturer alone can get set off of Central Excise duty on manufactured products which is ultimately exported by him; that keeping in view the provisions of Rules 12 and 13, Rule 57F(3) has to be construed harmoniously. The ld. JDR submits that such refund is admissible only to the manufacturers who directly export their goods and not in case of those manufacturers who export through merchant exporters. The ld. JDR submits that since in the present case the excisable goods have not been exported directly by the manufacturer, refund of Modvat credit is not admissible. On the contrary the ld. JDR submits that since the goods are exported by the merchant exporters 'duty drawback' under Customs & Central Excise Duties (Drawback) Rule, 1971 can only be claimed by the exporter. He, therefore prays that the appeal may be allowed.

6. Heard the submissions of learned JDR, perused the case records and evidence on records. We find that the issue for determination before us is whether the provisions of Rule 57F(3) shall be applicable to the manufacturer who himself is not the exporter. For examining the implications of Rule 57F(3), the Rule 57F(3) is reproduced below : - "(3). Credit of specified duty allowed in respect of any inputs may be utilised towards payment of duty of excise - (i) on the waste, if any, arising in the course of manufacture of the final product; or (ii) on the inputs themselves if such inputs have been permitted to be cleared under sub-rule (1). Provided that the credit of specified duty in respect of inputs used in the final products cleared for export under bond shall be allowed utilised towards payment of duty of excise on similar final products cleared for home consumption on payment of duty and, where for any reason such adjustment is not possible, by refund to the manufacturer subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification in the office Gazette.

Provided further that no such refund of credit of duty shall be allowed if the manufacturer avails of drawback allowed under the Customs and Central Excise Duties (Drawback) Rules, 1971, or claims rebate of duty under Rule 12A, in respect of duty." 7. We observe that manner of utilisation of the inputs and credit allowed in respect of duty thereof is "(3) credit of specified duty allowed in respect of any inputs may be utilised towards payment of duty of excise, - (i) on any of the final products in or, in relation to the manufacture of which such inputs are intended to be used in accordance with the declaration filed under Sub-rule (1) of Rule 57G or (ii) on the waste, if any, arising in the course of manufacture of the final products or (iii) on the inputs themselves if such inputs have been permitted to be cleared under Sub-rule (1): Provided that the credit of specified duty in respect of inputs used in the final products cleared for export under bond shall be allowed to be utilised towards payment of duty of excise on similar products cleared for home consumption on payment of duty and, where for any reason, such adjustment is not possible, by refund to the manufacturer subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification in the Official Gazette." We also observe that Government of India issued Notification No. 85/87, dated 1-3-1987 which inter aha provided that refund of credit of specified duty allowed in respect of inputs used in or in relation to the manufacture of final products which are cleared for export under bond may be allowed subject to safeguards, conditions and limitations set out in the appendix to this notification. We find that the facts in this case are that the goods in fact were exported and the manufacturer of the goods was not in a position to utilise the credit of duty allowed under Rule 57A against goods exported during the quarter to which claim relates. We find that the refund claim was also preferred within time. We also observe that admitted position is that the goods exported were manufactured by the respondents that Rule 57F(3) is applicable to the respondents; that even Notification 85/87 has been complied with and therefore we do not find any legal infirmity in the impugned order. In the result the impugned order is upheld and the appeal is rejected.

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