

Tata Tea Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-24-1997

Reported in : (1997)(96)ELT572TriDel

Appellant : Tata Tea Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This bunch of 5 appeals is taken up together for disposal in this single order, the fact being common.
2. The appellants manufactured dust tea. Finding no market therefor they requested the jurisdictional Assistant Collector for permission to send the same to another factory under the procedure prescribed under Rule 173L but permitted follow them to follow the procedure under Rule 56B "if the Company felt that the orthodox tea dust was only in semi-finished stage and required further manufacture for marketing." The appellants accordingly transferred several consignments of tea in terms of the said rule after filing requisite bond. The teas were duly processed and cleared from the receiving factory on payment of duty, although after quite some time. Later, show cause notices were issued to all despatching factories alleging that quantities so transferred were not accounted for and that duty thereon was not paid by the transferring factories. After hearing the appellants, the Assistant Collector observed that the facility under Rule 56B had been wrongly given and had later been withdrawn. In view of the this he held that the despatching factories were not allow to clear the tea without payment of duty.

On this logic he confirmed the demand. He did not impose a penalty in any case. The Collector (Appeals) observed that the goods were fully manufactured goods, that the permission under Rule 56B was wrongly given and had subsequently, been withdrawn and that since the liability to pay duty on the goods was not discharged by the despatching factories, the confirmation was correct. In passing this order, he observed that the payment of duty on CTC in the processing factory could not be taken as discharge of duty liability on the tea cleared from the despatching factories. In the present appeal this order is being challenged.

3. We have heard Shri Thomas Vellapally, learned Advocate for the appellants and Shri P.K. Jain, SDR, for the Revenue. At the material time Rule 56B read as under :- "56B. Special procedure for removal of finished excisable or semi-finished goods for certain purposes. - The Collector may, by special order and subject to such conditions as may be specified by the Collector, permit a manufacturer to remove (i) excisable goods which are in the nature of semi-finished goods, for carrying out certain manufacturing processes, or to some other premises of his or to the premises of another person and to bring back such goods to his factory, without payment of duty, or to some other licensed premises of his or to the premises of another assessee and allow these goods to be removed on payment of duty or without payment of duty for export from such other licensed premises of his or from the premises of such assessee to whom the goods have been sent:..." 4. As per the provisions the goods after processing could be cleared from either the premises of despatching factory or that of the processing factory. In this case it is the claim of the appellants that the goods were finally cleared on payment of duty from the processing factory. This claim was made before the Collector (Appeals) also, although before us the learned Advocate was not able to show the date and amount of payment made by the processing factory. The Collector (Appeals) does not dispute that the duty was paid by the processing factory but observed that "the payment of duty of CTC in different factories cannot be taken as discharge of duty liability on orthodox dust tea which was cleared without payment of duty." This belief of the Collector is wrong inasmuch as the provisions of Rule 56B specifically permit removal of goods without payment of duty. It is correct that the contested goods were not within the parameters of the said rule. It may be that the permission was revoked subsequently but during the pendency of the permission

to operate under the rule, the appellants were perfectly within their right to clear the goods without payment of duty. The subsequent revocation of the permission cannot operate against the interest of the assessee. Nor do we find any merit in the Collector's belief that in view of the wrong avilment of the said rule, duty had to be paid again on the said goods. We find that the orders, confirming the demand made in the impugned orders do not sustain. At the same time we take cognizance of the plea made by the learned Departmental Representative that there is nothing in the evidence to show the dates on which the duties were paid by the processing factory and the quantum thereof.

We, therefore, set aside the order of the Collector and allow these appeals. The Assistant Collector is a liberty to verify the fact and the quantum of duty paid.

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