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Precise Laboratories Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-03-1997

Reported in : (1998)(97)ELT308TriDel

Appellant : Precise Laboratories Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The appellants assail the order of the Collector of Central Excise (Appeals), Ghaziabad who has upheld the order of the Assistant Collector of Central Excise, Ghaziabad by which he rejected the refund claim dated 29-4-1992 for refund of duty of Rs. 1,38,655/- debited by the appellants in their PLA account vide entry No. 56 dated 26-3-1991.

2. I have heard Shri M.P. Devnath, learned Counsel and Shri Nayyar, learned DR.3. For a better understanding of the dispute in this case, it would be necessary to set out a few facts for easy reference. The appellants who are manufacturers of Lal Dant Manjan and Hair Oil obtained inputs viz.

plastic caps and plastic containers from their suppliers who cleared them to the appellants after payment of duty and the appellants used these containers and caps in the manufacture of their final products which are ultimately cleared on payment of duty. Since the Department was of the view that the inputs supplier M/s. Amrita Moulding was eligible to the benefit of exemption from duty on plastic caps and containers as per the provisions of Notification 53/88-C.E., dated 1-3-

1988, the Department held that the input supplier had no option to pay duty on the inputs but could only avail of Notification 53/88 and clear the inputs without payment of duty. It is for this reason that the Department was of the view that the appellants herein who are receivers of duty paid inputs could not take Modvat credit on inputs and, therefore, by letter dated 14-3-1991 addressed to them by the Range Superintendent, the appellants, were called upon to deposit the duty of Rs. 1,33,655/- being the duty payable on the inputs viz.

plastic caps and containers during the period 4-1-1991 to 31-1-1991. On 26-3-1991, the appellants addressed the Range Superintendent informing him that they had debited the entire amount in question under protest.

Subsequently, they also filed a detailed representation to the Assistant Collector of Central Excise vide their letter dated 27-5-1991. For the months of February, March and April, 1991, the Department issued two show cause notices, one dated 22-7-1991 and the other dated 26-12-1991 proposing recovery of credit allegedly wrongly availed by the appellants on the above mentioned inputs during the periods from February to April, 1991. These show cause notices came to be adjudicated by the Assistant Collector of Central Excise who vide order dated 30-3-1992 dropped the demands. Thereupon, the appellants preferred a refund claim for the amount of Rs. 1,38,655/- debited by them on 26-3-1991 in pursuance to the Superintendent's communication dated 14-3-1991. The refund claim was rejected by the Assistant Collector for the reason that the assessees had not adopted proper procedure under Rule 233B providing for procedure to be followed in cases where duty is paid under protest and for the reason that since Rule 233B procedure was not followed, applicable provision was Section 11B of the Central Excises Act, 1944 providing for a period of six months limitation for filing of refund claims and since the refund claim had been filed on 29-4-1992 for refund of duty paid on 26-3-1991, the assessees' refund claim was hit by the limitation period provided under Section 11B and the lower appellate authority confirmed the order of the Assistant Collector and hence this appeal.

4. There is no dispute that the refund claim was lodged with the Range Superintendent on 26-3-1991 and the dispute revolves around the meaning of

'proper officer' in terms of Rule 233B(1). Learned Counsel is correct in pointing out that it has been held in a series of cases decided by the Tribunal that the Range Superintendent is to be construed as the Proper Officer to whom a protest letter can be delivered under Rule 233B(1) [see order of Tribunal in the case reported in 1989 (44) E.L.T. 744 in the case of ICEM Engineering Co. P.Ltd. v. CCE, 1993 (66) E.L.T. 635 - DCM Data Products and 1995 (77) E.L.T. 407 -Collector of Central Excise v. Unik Springs]. The Tribunal in these cases has held that the Superintendent is the Proper Officer for the purpose of Clause (1) of Rule 233B of Central Excise Rules, 1944 and there is no infirmity in filing protest letters with the Range Superintendent. Therefore, following the ratio of the above cited decisions, I hold that the protest letter dated 26-3-1991 delivered to the Range Superintendent satisfies the requirement of Clause (1) of Rule 233B. Clause (2) is also fulfilled since the show cause notice itself acknowledges that duty was paid under protest. Requirement of Clause (5) of Rule 233B has also been complied with since the appellants filed a detailed representation to the Assistant Collector of Central Excise on 27-5-1991 which is within a period of 3 months from the date of delivery of the letter of protest. Clause (4) of Rule 233B may not be applicable in the present case because as rightly pointed by the learned Counsel, this is a situation where there is a one time payment (by debit in PLA) and one time protest and it is not continuous payment of duty under protest. Since the appellants have substantially complied with the requirements of Rule 233B which have been held to be directory and not mandatory by the Hon'ble Bombay High Court in the case of Roche Products reported in 1991 (51) E.L.T. 238, there is no ground for disallowing refund to the appellants. In the light of this decision, I set aside the impugned order holding that the appellants are entitled to the refund of Rs. 1,38,655/- for the period 4-1-1991 to 31-1-1991 and allow the appeal with consequential relief of recredit of this amount in RG 23A Part II in accordance with law.

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