Collector of Central Excise Vs. Pidilite Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-03-1998

Reported in : (1998)(101)ELT693Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Pidilite Industries Ltd.

Judgement :
1. This appeal has been filed by the Commissioner of Central Excise, Mumbai-II against the Order dated 7-7-1987 passed by the Commissioner of Central Excise (Appeals), Mumbai. The brief facts are that the Respondents manufactures textile Auxiliaries, Chemicals, Dyes, Pigments. They filed a classification list in March 1982 classifying 12 of their products as Synthetics Resins under Item 15A(1) of the old Central Excise Tariff. However, they claimed classification thereto under Tariff Item 68 with a remark "According to us these products fall under Tariff Item 68. But due to budgetary changes of 1982-83, doubt is raised about its classification under Tariff Item 68. In order to reserve our right of refund, we will pay duty under Tariff Item 15A(1) under protest." The classification list was approved by the Asstt.

Collector of Central Excise Division III on 2-6-1982 classifying their product under Tariff 15A(1). Subsequently following a Tariff Advice dated 10-5-1982, the Respondents filed a revised classification list on 18-8-1982 classifying the said products under Tariff item 68 with the remark "In our opinion these products fall under Tariff Item 68.

However, we are paying duty under Tariff Item 15A(1) under protest".

This classification list was approved by the Asstt. Collector on 28-12-1983 approving classification of goods under Item 68 of the Central Excise Tariff. On 9-3-1994 the Respondents filed a refund claim for Rs. 2,94,163/- claiming that differential duty paid between 29-3-1982 to 8-1-1984 on the grounds that the duty was paid under protest. The Asstt. Collector, however, in his order dated 15-12-1984 sanctioned refund amount of Rs. 1,40,306/- being the differential duty for the period 29-3-1982 to 17-8-1982 as duty paid under protest, and from 10-9-1983 to 8-1-1984 as having been claimed within 6 months period from the date of payment of duty. However, he rejected the remaining refund claim amounting to Rs. 1,53,857.59 for the period from 18-8-1982 as inadmissible being time barred. The appeal against this order of the Asstt. Collector was disposed of by the Commissioner (Appeals) who admitted the appeal subject to the condition that it was shown to the satisfaction of the Asstt. Collector that duty was being paid under protest from 18-8-1982 and that this fact was endorsed on the classification list.

2. Shri D. Gurnani, ld. DR contended that the Commissioner (Appeals) had erred in accepting the Respondents submission that they were paying duty under protest because they have not followed the procedure set out under Rule 233B of the Central Excise Rules for payment of duty under protest. Whatever protest they have made by endorsement in the classification list had come to an end, according to the DR, with the approval of the classification list and deletion of the endorsement.

4. We have heard Shri Santosh Kumar, Director of the Respondents. The question is regarding the eligibility to refund of the duty paid during 18-8-1982 to 9-9-1993. We find that the main ground for Department's appeal is that the payment of duty during this period cannot be considered as duty paid under protest because the endorsement regarding the payment of duty under protest in the classification list has been deleted by the Asstt. Collector and the Respondents have not followed the procedure set out for the purpose in Rule 233B of Central Excise Rules. We however, note that the classification list containing the protest endorsement

submitted on 18-8-1982 came to be approved finally by the Asstt. Collector only on 28-12-1983. We observe that in such a situation payment of duty during the period pending the final approval of the classification list has been held to be payment of duty under protest by the Supreme Court in its decision in the case of Samrat International v. Collector 1991 (33) ECR 19. In the present case also the Respondents have filed the revised classification list with the budgetary changes and there was also change in the classification of the goods from 15A(1) to 68 of Central Excise Tariff. In such a situation according to the rules they could not have taken clearance of the goods on the existing classification list submitted on 18-8-1982 without prior approval. Therefore they had continued to pay duty for clearing the goods under the earlier approved classification which was under Item 15A(1). In these circumstances the ratio of the Supreme Court decision in the case of Samrat International will have direct application and the payment during the period will have to be deemed to be payment made on provisional assessment of the goods until the date on which the classification submitted by them was approved finally. In such a view of the matter we see no reason for interfering with the impugned order of the Commissioner (Appeals). The appeal is dismissed.