Commissioner of Central Excise Vs. U.S. Vitamins (i) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-24-1998

Reported in : (1998)(103)ELT393Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : U.S. Vitamins (i) Ltd.

Judgement :

1. This is an appeal filed by the department against the decision of the Collector (Appeals), Pune made in Order-in-Appeal No. P-345/93 dated 31-12-1993 whereunder he allowed the appeal of the respondent and set aside the Assistant Collector's order made in Order-in-Original F.No. V-ch-30 (18) RC-12/91/345, dated 18-8-1992.

2. The facts of the case are that the respondent had received aluminium coil vide GP 1 No. 2541 dated 31-3-1990. The GP1 was issued in the name of M/s. India Foils (I) Ltd. who endorsed in the name of the appellant at Mumbai. The appellant in Mumbai endorsed the said GP1 in its own name at Lote Parshuram. The assessee cited before the Assistant Collector the decision of the Tribunal in S.B.S. Organics Pvt. Ltd. v.CCE -1990 (45) E.L.T. 701. The Assistant Collector rejected the claim.

The Collector (Appeals) by the impugned order has held that since the endorsement is in respect of appellant's own unit, therefore he followed the judgment of the Tribunal in S.B.S. Organics (supra) and held in favour of the respondent. Hence the present appeal.

2. The departmental representative while arguing on behalf of the department stated that the Board has given instructions on 9-4-1990 that the case of S.B.S. Organics should be treated as an exceptional one. The Tribunal is not bound by the Board's instructions. However, the DR has invited my attention to the decision of the Tribunal in the case of Premier Induction Pvt. Ltd. v. CCE, Chandigarh 22. The Tribunal in the said case after taking note of the judgment passed by the Tribunal in S.B.S. Organics case (supra) had held that the appellant's case cannot be made applicable as the term "usual" is used in the provisions of Rule 57G.3. I have considered the rival submissions. Even in the case of Premier Induction Pvt. Ltd. there were 3 endorsements as is revealed in page 25 of the reports. In this case it is very peculiar in the sense the endorsement has been made in favour of itself. The Mumbai Unit has endorsed it in favour of Unit at Lote Parshuram. Shri S.S. Gupta, learned Chartered Accountant would say that licensee should be treated as same person and for purpose of complying with Central Excise Regulations the endorsement has been made so that the inputs can be easily traced. The Modvat credit is a special procedure as has been pointed out by learned Members of the Tribunal in the case of State of Haryana v. Raghubir Dayal -1995 AIR SCW 46. The Supreme Court has held in that case that it is settled laws that when a statute is based for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of something, would be mandatory. Therefore the mandatory provisions are that there can only be two endorsements. Endorsement means it is an endorsement simplicity as required by Central Excise Act and Rules. For the purpose of Central Excise Act and Rules two units are treated as separate entities even though of the same judicial or legal person. Hence following the judgment of the Supreme Court referred to above and it has been referred to by the judgment of the Tribunal in Premier Induction Pvt.

Ltd. (Supra), I have to accept the arguments of the DR. I must also see that it is also to be recorded that the Tribunal in Premier Induction Pvt. Ltd. case has taken note of the judgment of the Tribunal in S.B.S.Organics Pvt. Ltd. -1990 (45) E.L.T. 701.1 would like to follow the latter judgment of the Tribunal. There cannot be a reference to the judgment of the Supreme Court referred to in the later judgment, i.e.

S.B.S. Organics Pvt. Ltd. case as the Supreme Court considered later.

Therefore I am constrained to allow the appeal.