

Hotline Teletube and Components Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-15-1998

Reported in : (1998)(62)ECC240

Appellant : Hotline Teletube and Components

Respondent : Commr. of C. Ex.

Judgement :

1. The above appeals arise out of the order passed by the Commissioner of Central Excise (Appeals) Indore, confirming the two separate adjudication orders dated 15-11-1995 and 7-12-1995 passed by the Assistant Commissioner rejecting refund claims filed by the appellants herein.

2. The brief facts of the case are that the appellants herein are inter alia engaged in the manufacture of black and white picture tubes falling under Chapter 85 of the Schedule to the CETA, 1985 and they availed of Modvat credit of duty paid on inputs used in the manufacture of picture tubes, part of which they cleared for home consumption on payment of duty, utilising the credit paid on the inputs in accordance with the provisions of Rule 57F. They also cleared black and white picture tubes for export under bond without payment of duty. The duty paid on the inputs used in the manufacture of the final product cleared for export under bond without payment of duty got accumulated in their RG 23A Part II account. In terms of the proviso to Rule 57F(4), the credit of duty in respect of inputs used in the final product cleared for export under bond is allowed to be utilised towards payment of excise duty on the final products cleared for home consumption and in terms of the

said proviso, in the event of an assessee being unable to utilise the said credit, cash refund of such credit is permissible as per the procedure prescribed under Notification 85/87-C.E., dated 1-3-1987. Accordingly, the appellants filed two refund claims on 7-8-1995 for Rs. 7,32,493.91 and on 17-8-1995 for Rs. 79,29,590.08 in terms of the above mentioned Rule and notification for refund of credit of duty paid on inputs used in the manufacture of picture tubes exported during two quarters viz. quarter ending March, 1995 and June, 1995 respectively. A show cause notice was issued to the appellants on 25-9-1995 proposing rejection of the claim for the quarter ending March, 1995 on the ground that the appellants had not fulfilled the condition laid down under Notification 85/87-C.E. and that they had availed drawback under the Customs and Central Excise Duties (Drawback) Rules, 1971 in respect of exports made by them. For the quarter ending June, 1995, a show cause notice was issued on 5-10-1995 on the same ground as the first ground raised in the earlier notice. The Assistant Commissioner sanctioned the claim for the period ending March, 1995 after deducting a sum of Rs. 3310/- only vide his order dated 8-11-1995. As regards refund claim for the quarter ending June, 1995, the Assistant Commissioner rejected it for the reason that the appellants had filed two refund claims, albeit for different quarters, in the same quarter i.e. quarter ending September, 1995, thereby violating clause 2 of the Appendix to Notification 85/87-C.E. The appellants filed another refund claim for an amount of Rs. 41,57,265/- on 1-12-1995 for the duty paid on inputs used in the manufacture of the picture tubes exported in June, 1995 in order to overcome the objection of the Department that two refund claims, even though pertaining to two different quarters, cannot be filed in the same quarter. This refund claim was also rejected by the Assistant Commissioner's order dated 7-12-1995 on the ground that the refund claim relating to exports made in the quarter ending June, 1995 had already been decided in his Order-in-Original dated 15-11-1995. The Commissioner (Appeals) before whom the appeals were filed both against the order dated 15-11-1995 and the order dated 7-12-1995, upheld the order of the Assistant Commissioner, holding that the filing of two refund claims in the same quarter was contrary to the provisions of clause 2 of the Appendix to the relevant notification. Hence these appeals.

2. We have heard Shri V. Lakshmikumaran, learned Counsel and Shri Sanjiv Srivastava, learned DR and perused the records. The findings of the lower appellate authority is contained in para 7 of the impugned order, which is reproduced below: "The impugned order and the submissions have been considered by me carefully. The appellants are not disputing that the two claims, one for the quarter ending 31st March and the other for the quarter ending 30th June have been filed in the quarter 'July to September': The Condition 2 reads as "the claims for such refunds are submitted not more than once in any quarter in a calendar year". The application is prescribed in Form A annexed to the notification which reads "refund relating to Quarter...." A plain reading of Condition 2 of the notification brings out that the claims should be submitted not more than once in any quarter in a calendar year.

According to this provision the claims for the quarter ending March 31st should have been lodged in the quarter April to June and for the quarter ending June in the quarter July to September or subsequent quarter. The export of the goods are not in dispute. The goods have in fact been exported. It is also not in dispute that the appellant was not in a position to utilise the credit during the quarter to which the claim relates. The appellant, in this case have also complied with the filing of claims before the expiry of the period i.e. 6 months specified in Sub-section (sic) 11B of the Central Excises and Salt Act, 1944. The requirement of filing the claims once in a quarter appears to be to ensure proper verification of the Condition No. 5 i.e. the refund shall be allowed only in those circumstances where a manufacturer is not in a position to utilise the credit of the duty allowed under Rule 57A against the goods exported during the quarter to which the claim relates. Since the condition of the notification has not been complied with and that the appellant admitted that the claim for the 1st quarter has been settled as per condition has been correctly rejected. The order-in-original, therefore, does not call for any interference.

The appeal is accordingly rejected." It is seen from the above that the only reason for rejection of the refund claims is the filing of two refund claims (for different periods) in the same quarter, i.e. in the quarter ending 30-9-1995, which is against the requirement of clause 2 of Appendix to the Notification 85/87-C.E. Form A

which prescribes the application form for refund of duty under Rule 57F(3) specifically mentions that refund should relate to a particular quarter. The contention of the appellants is that clause 2 of the Appendix to the notification is to be interpreted so as to mean that only 4 refund claims can be filed in a calendar year in order to restrict the number of refund claims, so that all the particulars given by a manufacturer for the purpose of claiming refund can be verified by the proper officer. They contend that they have not violated clause 2 of the Appendix to the notification since they have not filed 4 refund claims in the calendar year 1995 and have only filed a total of 3 refund claims, 2 in the month of August, 1995 and an alternative claim in the month of December, 1995. We are unable to agree with this contention. Clause 2 of Appendix to the Notification 85/87 stipulates that the claim for refund of credit allowed on inputs used in goods exported under bond should be submitted not more than once in any quarter in a calendar year. This clearly means that only one refund claim can be filed in a particular quarter in a calendar year. We would have been able to appreciate the appellants' contention if the expression used in clause 2 read "not more than once for any quarter". However, we agree with the appellants' plea that the condition prescribed in clause 2 is a procedural requirement, the non-fulfilment of which cannot result in denial of the substantive benefit of refund which is conferred under Rule 57F(4) of the Central Excise Rules, 1944. We find support for our view in the order of the Tribunal in the case of Unique Pharmaceutical Laboratories v. CCE, Bombay reported in 1994 (74) E.L.T. 925. In that case, the Assistant Collector allowed the assessee's claim for refund of Modvat credit accumulated on account of export of their final product. The Department went up in appeal before the Collector (Appeals) who accepted the Revenue's appeal and disallowed the refund on the ground that since the goods were actually shipped on 21-10-1989 i.e. in the quarter, October to December, 1989 (the goods were allowed for export under AR 4 dated 5-9-1989), the refund could not have been claimed in the previous quarter i.e. in the quarter ending September, 1989, in view of the provisions of Notification 85/87 issued under Rule 57F(3) of the Central Excise Rules. The Tribunal held that although technically and legally, the claim should have been made in the next quarter as per the provisions of the notification, the fact that the goods removed for export under AR 4 dated 5-9-1989 have been exported is not disputed and in

these circumstances, the aforesaid amount of refund in any case is available to the appellants in the next quarter. In view of this, the Tribunal held that the procedural irregularity can always be rectified by filing a claim in the next quarter. In the present appeals, the appellants have filed the claims for refund only after the goods have been exported. In the case of *Hindustan Motors v. CCE, Calcutta* reported in 1996 (87) E.L.T. 216, the Tribunal has held that the condition in clause 2 of the Appendix to Notification 85/87-C.E. that the refund claims are to be submitted not more than once in any quarter in a calendar year may prevent a manufacturer from filing a refund claim within the statutory limit permissible; if for any reason he is unable to file his claim in the particular quarter when it is due to be filed and in the next quarter or the subsequent quarter when time limit under Section 11B of the Central Excises Act, 1944 may be available, he will not be able to file it within six months, if in that next or subsequent quarter, he has filed other refund claims, and such a condition is not in order. We are, therefore, of the opinion that the filing of the two refund claims for different quarters in the same quarter is only a procedural irregularity which cannot affect the substantive right of the appellants to refund of credit in terms of Rule 57F(4).

3. The case law cited by the learned DR viz. the decision of the Hon'ble Supreme Court in the case of *Mihir Textiles* reported in 1997 (92) E.L.T. 9 (S.C.) is distinguishable. In that case, the question before the Apex Court was whether the importers were entitled to concessional rate of customs duty under entry 84.66 of the Customs Tariff as project import. The importers claimed the benefit of project import which had been denied to them on the ground that the project import contract had not been registered prior to clearance of the goods. The Apex Court held that the concessional relief of duty which is made dependent on the satisfaction of certain conditions can be granted only on compliance with such conditions even if they are only directive. In the present case, however, the substantive right to get refund of credit is governed by Rule 57F(4) and in the absence of any dispute that the appellants are otherwise entitled to refund, the filing of two refund claims for different periods in the same quarter can only be construed as a procedural irregularity.

4. In the light of the above discussion and in the light of the judgments of the Tribunal cited supra, we hold that the appellants are entitled to refund of Rs. 78,85,298/-. Since this amount includes the amount of Rs. 41,57,265/-, they would not be entitled once over to the refund of Rs. 41,57,265/- which is the subject matter of appeal No.E/435/97-NB. In the result, E/433/97-NB is allowed while appeal No.E/435/97-NB is rejected.

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