

Commissioner of Central Excise Vs. Raj Iron Foundry

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-21-1998

Reported in : (1999)(110)ELT537TriDel

Appellant : Commissioner of Central Excise

Respondent : Raj Iron Foundry

Judgement :

1. M/s. Raj Iron Foundry had paid central excise duty at the rate of 15% ad valorem as against the rate of 10% ad valorem as applicable to the Pipes of Cast Iron classifiable under sub-heading No. 7303.00 of the Central Excise Tariff on 16-3-1995 under several invoices. Their customers pointed out that the applicable rate under Notification No.41/94-C.E., dated 1-3-1994 was 10% ad valorem on realising the mistake, M/s. Raj Iron Foundry issued Credit Notes to their customers and during the same month of March, 1995 took the credit of Rs. 16,480/-. The proceedings were drawn against them and it was contended by the Revenue that the assessee should have applied for refund and that it was not proper that the Credit should have been taken by them without any permission from the Excise-Department. The Commissioner of Central Excise (Appeals), Allahabad referred to the Self-removal Procedure Instructions and took a view within the same month the assessee could take the Credit of duty paid in excess. Being aggrieved by this order, the Revenue had filed the present appeal.

2. I have heard Shri Y.R. Kilania, JDR for the appellants/Revenue. Shri A.S. Sisodia, Advocate was present for the respondents, M/s. Raj Iron Foundry.

3. I have carefully considered the matter and have analysed the submissions made by both the sides. There is no dispute that the applicable rate of duty was 10% ad valorem while the respondents had paid duty at the rate of 5% ad valorem. The Assistant Commissioner of Central Excise, Agra had confirmed the demand on the ground that the assessee could have claimed refund from the Department in place of taking the Credit on their own. He had also taken objection with regard to the passing of the incidence of the duty to the buyers.

4. The Id. Commissioner of Central Excise (Appeals), Allahabad has discussed the matter as under :- "As regard credit of Rs. 16,480/- taken by the appellants on account of excess duty paid, I find that the adjudicating authority has not challenged that the excess duty was not paid as confirmed the demand on the ground that as per Rule 173-1(2) the appellant can take credit on receipt of the assessment order in the copy of return duly countersigned by Superintendent of Central Excise. It is observed that the appellants have paid excess duty under mistaken belief and took the credit of excess duty within the same month in the RG 23A Part II as per S.R.P. Procedure. As such there appear no violation of Central Excise Rules. As per S.R.P. Procedure, the assessee are entitled to debit and credit the short paid/excess paid duty within the same month. Rule 173-1(2) comes into operation when the appellants have filed the return and the credit is taken in the subsequent month. Accordingly, there is no reason to deny the credit correctly taken." 5. The amount involved is only Rs. 16,480/-. It is an admitted position that the respondents had paid duty in excess. The Id. Commissioner (Appeals) had referred to the Departmental Procedures under Self-removal Procedure, wherein it had been provided that an assessee was entitled to debit and credit the short paid/excess paid duty within the same month.

6. Taking into account the facts and circumstances of the case, I do not find any ground to interfere with the view taken by the Id. Commissioner (Appeals). As a result, the appeal filed by the Revenue is rejected. Ordered accordingly.