

Echjay Industries Ltd. Vs. Commissioner of Central Excise

Echjay Industries Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/14125

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-13-1998

Reported in : (1999)(113)ELT920Tri(Mum.)bai

Appellant : Echjay Industries Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This is an appeal filed by the appellant against the decision of the Collector (Appeals), Ahmedabad made in Order-in-Appeal No. 4/94(3-Raj.) /CE./Collr (A)/Ahd., dated 4-1-1994 dismissing the appeal of the appellant. The Collector (Appeals) held that the order passed by the Assistant Collector was correct.

2. The appellant is a manufacturer of steel forgings falling under Chapter Heading 70.30 of CETA. The appellant filed refund claim of a duty amounting Rs. 27,246.84 on 1-1-1990 on the ground that fully finished flanges were cleared to Indian Oil Corporation (IOC) and duty was paid on 27-1-1989. The goods were not taken delivery by IOC on the ground of delay and the goods were returned on 17-7-1989. On 18-7-1989 the appellant filed D3 Intimation under Rule 173L/173H and accounted for in the register maintained under Rule 173H. Show cause notice dated 17-2-1992 was issued under Section 11B by the Assistant Collector. A reply was filed on 17-2-1992. The Assistant Collector in the order had held that claim under Rule 173L could be considered only if the goods returned are re-made or refined. Here the facts are not like that.

Hence refund under Rule 173L could not be entertained. He also held that refund claim was filed on 1-1-1990 in respect of duty paid on 27-1-1989. Therefore it is barred by limitation. Against this an appeal was filed before the appellate authority who by the impugned order confirmed the same. In the impugned order it was held by the appellate authority that provisions of Rule 173H and 173L are not applicable. The appellate authority also held that it was barred by limitation. Hence the present appeal.

3. Mrs. Bhavna Doshi, C.A., appeared for the appellant, argued that when the goods came back from the purchaser IOC as a responsible assessee they have intimated the Collector in terms of Rule 173H. When the goods were sold later to some other purchasers, facts reveal that in respect of a manufacturer of the goods, excise duty has been paid twice. Therefore she is entitled to claim refund. She also showed me the letter dated 1-1-1990 under which such refund claim has been made.

4. As against this learned DR, Ms. Reshma Lakhani argued that if it is a claim the refund has been filed in respect of the manufacture then it is barred by limitation, as the claim has been filed on 1-1-1990. On the other hand, if the claim is in respect of GPs dated 26-7-1989, 30-9-1989 and 25-11-1989 then such refunds are governed by unjust enrichment. Moreover, she also says that order passed by the lower authorities are perfectly followed and legal inasmuch as when the goods were returned, the provisions of Rule 173H will never be applicable.

5. I have considered the rival submissions. Any manufactured goods which has suffered excise duty, can be returned to the place of manufacture only in terms of Rule 173H. Sub-rule (1) of Rule 173H provides for grounds under which the goods could be returned. Those grounds are enumerated under clauses (9), (9)(a), (b), (c) (d) & (e)).

The goods had been returned because the original purchaser, viz. IOC had rejected the goods. When the goods are taken back by the assessee in their factory, in my view the provisions of Rule 173H cannot be applicable. The grounds of retention of the duty paid goods in the factory are reflected in the clauses (a) to (e) of Rule 173H. Nowhere it would find that the grounds of return of the goods

could be made as has been made in this case where the purchaser rejects the goods. Under no circumstances the duty paid goods could be returned to the factory in terms of provisions of Rule 173H Clause (1). If the goods are returned by the purchaser the assessee ought to have envisaged these types of circumstances and he ought to have made a separate storage for storing those types of goods. It has been specifically held by the appellate authority in the impugned order as follows : "In this case, admittedly no repair or remake or reconditioning has been done on any of the returned flanges in question. Simply since the consignee had refused to accept the goods, the appellant by taking the course of D-3 application has received back the goods.

The purpose for which they had taken back the goods were also clearly mentioned on the D3 application to the effect, that the goods were returned because the consignee had rejected the goods due to not sticking to time limit. Now in the Rules 173H/173L no such goods can be returned back to the factory unless some repair/remake/reconditioning is to be done. The appellant, therefore, initially, made a mis-declaration to the department while receiving back the duty paid goods. Their case is obviously not covered by these two rules for which the facility of clearances on payment of duty and secondly on clearances on 'Nil' duty gate passes without payment of duty (Rule 173H) are available to the appellant.

Nor it is a case of refund under section 11B, since it is not an erroneous payment of duty or short or excess payment of duty; nor it is covered under Rule 173H or 173L. The finding of the A.C. that the refund is time barred is also valid, since it appears that appellant paid duty on 27-1-1989 whereas they filed the refund claim on 1-1-1990. Hence, the order of rejection of the claim by the A.C. is well reasoned and perfectly legal. There is no ground to interfere with the orders of the A.C." I entirely agree with the above observation and finding as according to me finding given by the appellate authority is quite cogent, reasonable and logic.

6. Alternatively, if it is to be argued that when the duty has been subsequently paid, then as has been argued rightly by Ms. Lakhani it will amount to unjust enrichment which will come into play. The attitude of the assessee here to my mind is not legally correct. Hence I dismiss the appeal.

