

Cce Vs. Unique Chemicals

Cce Vs. Unique Chemicals

SooperKanoon Citation : sooperkanoon.com/15160

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-08-1999

Reported in : (1999)(85)LC166Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Cce

Respondent : Unique Chemicals

Judgement :

1. This is an appeal filed against the decision of Collector of Central Excise and Customs (Appeals), Mumbai made in Order-in-Original No.PCJ/634/Bom. 111/94 dated 20th October, 1994 thereunder he accepted the refund claim of the respondents reversing the findings of the Assistant Collector made in Order-in-Original File No. V (Ch. 29) 18-6/92 (37/93-94) dated 4.8.1993.

2. The respondents are having their factory situated at Plot No. P-10, Shiv Mahape Road, P.O. Ghansoli, Thane Belapur Road, Dist. Thane have filed refund claim for Rs. 11,98,521/-. By their letter dated 11.2.1992 which was received by the A.C.'s office on 17.12.1992 it would appear that the respondents cleared 2000 Kgs. of Metronidazole B.P. and 28950 Kgs. of Metronidazole Benzoate I.P. for export under bond during the period from 1st October, 1991 to 31st October, 1991. The refund claim arose due to non utilisation of the modvat credit of input for payment towards the duty of final product cleared for export during the period October, 1991. The claim was scrutinised by the A.C. who felt that the respondent did not

comply with the paragraph 7 of the Notification 85/87 as it then stood against which an appeal was filed. The Collector (Appeals) held that the requisite certificate of documentary proof regarding export had to be obtained from the Assistant Collector (Refund Section) Mumbai. Therefore, the desired documents could not be filed. Therefore he allowed the appeal of the respondents. Hence the present appeal by the Department.

3. It is contended by the Id. DR. Shri Ramteke, that in terms of Notfn.

No. 85/87 the assessee, whoever wants refund in respect of the modvat credit which has unutilised duty export should follow the conditions mentioned in the Notification strictly. In this case, since the documents were filed only in November, 1992 which was not filed along with the claim of refund is not entitled to be passed in favour of the assessee.

4. As against this Mr. Ramteke, Id. counsel for the respondent argues that the proof of shipment is an important document under which claim has to be scrutinised. That has to come only from the A.C. (Refund section) in the Central Excise, Mumbai. He, therefore, supports the finding given by the Collector in paragraph 4 of the impugned order.

5. We have considered the rival submissions. We are of the view that the ground taken by the Department in the appeal is not correct. It is true that in the Notification the application for refund has to be filed along with the proof of new exportation. It is a common knowledge that the proof exportation can only be given by the Customs Department.

The Customs Department gave such a proof only in November, 1992 and on receipt of the same it was forwarded to the refund section of the Assistant Collector of Central Excise. It is not the case of the department that the claim itself was filed belatedly. The claim in this case has been admittedly filed in November, 1992 itself. It is just like an appeal being filed in the Tribunal without the proper documents. We are, therefore of the view that the approach of the Department in this case is absolutely wrong. Hence we uphold the order passed by the Collector (Appeals) and dismiss the appeal of the department.

