

Duphar Interfran Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-11-1999

Reported in : (1999)(83)LC300Tri(Mum.)bai

Judge : S Bhatnagar, S Kang, A T V.K.

Appellant : Duphar Interfran Ltd.

Respondent : Cce

Judgement :

1. The appellant filed this appeal against the Order-in-appeal dated 21.3.1990 passed by the Collector of Central Excise (Appeals), Bombay.
2. In this case, the refund claim filed by the appellant was rejected on the ground that the appellant had not filed any appeal against approval of classification list and duty was not paid under protest.
3. Brief facts of this case are that appellant filed classification list in respect of their product "Vitamin D-3" (animal feed grade) claiming classification under tariff sub-heading 2302.00 of the Central Excise Tariff. The said classification list was returned by the revenue and the appellant was directed to file a classification list under tariff heading 2936.00 of the Central Excise Tariff. The appellant filed a classification list as directed by the Revenue and along with classification list the appellant had written to the Revenue that the product is a animal feed concentrate and is exempted under notification no. 285/86-CE and clearing the product on

payment of duty under protest. Thereafter, the appellant filed a refund claim and the same was rejected.

4. Ld. Counsel, appearing on behalf of the appellant, submits that the refund claim was rejected on the ground that no appeal was filed against approval of the classification list and the refund claim is time barred. He submits that the appellant filed the classification list along with a letter stating therein that they were paying duty under protest. He, further, submits that if the appellant had not filed any appeal, there is no bar under law for filing a refund claim. For this, he relied upon the decision of the Hon'ble Calcutta High Court in the case of I.T.C. Ltd. and Anr. v. U.O.I. reported in 1988 (34) ELT 437 : 1988 (17) ECR 148 (Cal) and the decision of the Tribunal in the case of Maruti Udyog Ltd. v. C.C.E. .

5. He, further, submits that when the appellant is forced to file a classification list under tariff heading 2936.00 in respect of their product, the appellant filed a letter of protest stating therein that the product is animal feed concentrate and is exempted under notification 285/86-CE and they were paying the duty under protest. He, therefore, prays that the appeal be allowed.

6. Ld. S.D.R., appearing on behalf of the Revenue, submits that the appellant filed no appeal against the classification list filed on 5.4.1988. Therefore, now they cannot claim the different heading in respect of their product as appellant accepted the classification. In respect of payment of duty under protest, he submits that the appellant had made no valid protest and not followed the Procedure under Rule 233 (sic) of the Central Excise Rules. Therefore, their refund claim is time barred.

8. The refund claim of the appellant is rejected on the ground that the appellant had not filed any appeal against the approval of classification under heading 2936.00. Therefore, the refund claim is not maintainable. The hon'ble Calcutta High Court in the case of ITC v.UOI held that Sections 11A and 11B of the Central Excise Act is applicable even if no appeal was filed against approval of the classification list. The hon'ble High Court held that provisions for appeal under Sections 35A and 35EE do not override Sections 11A and 11B of the Central Excise Act. A similar view was taken by the Tribunal in the case of Maruti Udyog Ltd. (supra). In view of these decisions, we find that the findings of the lower

authorities that the refund claim is not maintainable as the appellant had not filed any appeal against approval of the classification list, is not sustainable.

9. The refund claim was also rejected on the ground that the duty was not paid under protest. We find that when the appellant filed the classification list on 5.4.1988, as per the direction of the Revenue, along with this classification list, the appellant filed a letter stating therein that their product is animal feed concentrate and is eligible for the benefit of notification 285/86-CE and they were paying duty under protest. The hon'ble Bombay High Court in the case of Rotogravurs v. UOI reported in 1992 (37) ELT 407 (Bom.) : 1992 (40) ECR 173 (Bom) held that Rule 233B of Central Excise Rules is procedural in nature. In the present case, the appellant filed a protest letter along with classification list and the appellant clearly mentioned in the letter that they are paying duty under protest. Therefore, the appellant have paid duty under protest and the refund claim filed by the appellant is not time barred.

10. The adjudicating authority had not decided the issue of classification of the product, in question.

11. in view of the above discussion, the impugned order is set aside and matter is remanded to the jurisdictional authority to decide the claim of the appellant in accordance with law. The appeal is allowed by way of remand.

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