

Collector of Central Excise Vs. United Traders

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-02-1999

Reported in : (1999)(113)ELT426TriDel

Appellant : Collector of Central Excise

Respondent : United Traders

Judgement :

1. This is a Revenue appeal filed against the Order-in-Appeal dated 29-12-1992 passed by Collector (Appeals). The issue relates to the availability of deemed credit of duty on inputs in terms of the Government of India Order No. B/22/30/86-TRU, dated 7-4-1986.

2. The respondents who are engaged in the manufacture of parts and accessories of tractors falling under Chapter 8708 of the Central Excise Tariff had availed of deemed credit amounting to Rs. 3482.46 on their inputs, namely, plates, rounds etc. The Department took the stand that since the inputs were clearly recognisable as non-duty paid/charged to nil rate of duty, because of non-production of documents evidencing payment of duty, duty, deemed credit on the inputs was not admissible. By Order-in-Original the Assistant Collector confirmed the demand. Collector (Appeals) reversed the Order-in-original and held that the respondents herein would be eligible for the said deemed credit. Collector (Appeals) observed that the respondents had pointed out during the proceedings that they had brought the goods from the open market and in such cases, as held by the Tribunal in the case of Arun Auto Spinning and Manufacturing Co.

Ltd. v. C.C.E. reported in 1990 (48) E.L.T. 543 the goods were to be treated as duty paid.

3. When the matter was called, no one was present for the respondents despite acknowledgement of notice of hearing. Since the matter is old, we are proceeding to dispose of the matter after hearing the Id. SDR.4. Ld. SDR referred to the Grounds of Appeal and submitted that the inputs used by the assessee were wholly exempted items under Notification No. 208/83-C.E. This would itself make the goods recognisable as being non-duty paid as no duty had been paid by the manufacturer of these goods at the time of their clearance. There was therefore, no need for the Department to prove further that the said goods were non-duty paid. Further, the Collector (Appeals) had also erred in allowing the benefit of deemed credit as it was for the assessee first to take the stand that the inputs were duty paid and thereafter for that the Department to contest or accept the claim.

Reliance was placed in this connection to the judgment of the Punjab and Haryana High Court in Upper India Steels Manufacturing Co. case reported in 1990 (49) E.L.T. 22. Ld. SDR also brought to our notice another decision of the Tribunal, namely, Collector of Central Excise, Chandigarh v. Bajaj Sons Pvt. Ltd. 5. We have considered the submissions. We find that in Upper India Steel Mfg. and Engg. Co. case (supra) it was held that the initial burden is on the manufacturer to take a definite stand and it was then open to the Revenue to accept it or to contest it. Further, in Tribunal decision in C.C.E., Chandigarh v. Bajaj Sons Pvt. Ltd. (supra), the facts were different inasmuch as the assessee in the said case had been claiming that their inputs were covered by Notification No. 208/86. In the present case the appellants had claimed the benefit under Govt. of India Order No. B/22/30/86-TRU, dated 7-4-1986. It is also noticed that the respondents had claimed that they had bought the goods from the open market. As had been observed in the Tribunal decision in Arun Auto Spg. & Mfg. (supra) the words 'charged to nil rate of duty' in the Govt. of India Order dated 7-4-1986 had a special connotation and it did not bar deemed credit in respect of inputs wholly exempt from duty and deemed credit would be available. Even assuming that a part of the inputs received by the respondents were covered under Notification

No.208/83, further evidence was necessary to prove that the inputs were non-duty paid. In the absence of any such proof, when the party has already taken a stand about non-duty paid character of the goods, deemed credit cannot be denied.

6. In the above view of the matter, we find no merit in this Revenue appeal and the same is rejected.

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