

Easter Industries Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-26-1999

Reported in : (2003)(161)ELT1034TriDel

Judge : P Jain, Vice-, P Chacko

Appellant : Easter Industries Ltd.

Respondent : Commissioner of Central Excise

Judgement :

The appellants herein are manufacturers of polyester filament yarn.

They were paying duty on a certain rate on 15-12-90. A Notification was issued enhancing the rate of duty on the said product. However, the said Notification came to the notice of the Revenue as well as the assessee on 19-12-90. As a result, the appellants herein had been paying the duty on clearance of the polyester filament yarn at the lower rate as it was hitherto prevalent prior to 15-12-90. On 19-12-90 and 21-12-90, the officers of Central Excise debited the enhanced differential duty which arose during the period 15-12-90 to 18-2-90 in two instalments. Later on the appellants herein filed a refund claim of the aforesaid amount of duty debited by the officers in the PLA account maintained by the appellants.

A Show Cause Notice was issued by the Revenue proposing to reject the refund claim so filed by the appellants on two grounds; (i) that the duty has been correctly

charged inasmuch as the enhanced rate of duty was in force during the period 15-12-90 to 18-12-90, (ii) the refund claim is also covered by the doctrine of unjust enrichment and they asked the appellants to show evidence that they have not passed on the burden of duty to their customers.

The appellants have succeeded before the lower appellant authority on the first ground, that the Notification bringing the enhanced rate of duty would be effective only from 19-12-90 when that Notification was brought to the notice of the general public on that date. However, the refund claim has been rejected on the ground of unjust enrichment on a finding that the appellants have not been able to prove that the burden of duty has not been passed on in respect of the said goods to their customers. It is against the said finding of the lower appellate authority that the appellants have now come in appeal.

2. Ld. Advocate Sh. R. Santhanam for the appellants submits that in the facts and circumstances as narrated above, there could be just no occasion for passing on the burden of duty at a higher rate to their customers. He submits that the goods were under physical control procedure which envisage that goods could be cleared on presentation of an AR 1 application and the goods had to be removed on physical examination by the Inspector concerned and on signing of the AR 1 and after debiting the duty in the PLA. It is not disputed by the Revenue that all the clearances of goods made during the period 15-12-90 to 18-12-90 were on payment of the lower rate of duty as was prevalent prior to 15-12-90. It is only subsequently that the duty was debited from the PLA account of the appellants. Since the goods had already been sold, there was no question of any recovery of duty from their customers. In the facts and circumstances of this case, Id. Advocate submits that it is clear and apparent that no higher burden of duty has been passed on by the appellants to their customers. Consequently, he submits that the appeal be allowed and refund directed to be paid to the appellants.

3. Opposing the contentions, Id. SDR, Sh. A.K. Prasad submits that Section 12B raises a presumption that the incidence of duty has been passed on to the buyer unless the contrary is proved by the assessee/appellants. He further submits that it is the common practice of trade that even when duty is demanded subsequently

by the department and paid subsequently by the assessee, the assessee passes on the burden of duty to their customers by raising debit notes. He submits such a possibility could not be ruled out in the present case.

Therefore, the appellants have to say that they have not passed on the burden of duty by raising such debit notes. He further submits that the appeal deserves to be dismissed for the reason that the burden cast on the appellants under Section 12B of the Central Excises Act has not been discharged by them.

4. We have carefully considered the pleas advanced from both sides. We observe that in the instant case duty has been assessed and paid by the appellants at the lower rate of duty at the time of clearance of the goods. Therefore, only that burden of duty which was assessed and paid could be passed on by the appellants to their customers. The refund of duty claimed by the appellants in the instant case is that of a debit made in PLA subsequent to the date of clearance of the goods after the enhanced rate came to the notice of the departmental officers on 19-12-90. Under these circumstances to bring in the presumption of Section 12B will not be appropriate. Presumption envisages that every person who has paid the duty of excise on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such case. Duty is required to be paid under the provisions of the Act and the Rules thereunder at the time of clearance of the goods. It is not denied by the Revenue that only the lower amount of duty was assessed and paid at the time of removal of the goods so the presumption made in Section 12B can be only to the extent of duty assessed and paid at the time of clearance of the goods and not of the duty subsequently collected from the appellants unless there is some positive evidence to that effect produced by the department. Presumption under Section 12B will be only in respect of duty which has been assessed and paid at the time of clearance of the goods. Section 12B cannot be read in isolation with the other provisions and the scheme of the Central Excises Act and Rules made thereunder. Keeping in view the facts and circumstances of this case, we observe that only the lower burden of duty has been passed on by the appellant to their customers. The duty of which refund has been claimed by them cannot be said to have been passed on by them and nor any such presumption can be made under Section

12B. We also note that there is no evidence of SDRs assertion that practice of the trade is to raise debit notes if any subsequent duty liability is raised by the department. Therefore, the appeal deserves to be allowed.

We order accordingly. Since no other point is involved, we direct that refund be paid forthwith since the appeal is more than five years old.

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