

Goodyear (India) Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-17-1999

Reported in : (2000)(68)ECC602

Judge : S Kang, a T V.K.

Appellant : Goodyear (India) Ltd.

Respondent : C.C.E.

Judgement :

1. The appellants filed this appeal against Order-in-Appeal dated 24.8.92 passed by the Collector of Central Excise (Appeals) whereby the refund claim of the appellants was rejected on the ground that duty was not paid under protest. Therefore, the refund is time-barred.

2. Brief facts of the case are that the appellants are engaged in the manufacture of tyre, tubes and flaps. The appellants claimed the benefit of Notification 217/86-CE dated 2.4.86 in respect of tyre bead wire rings. The benefit was denied on the ground that duty was leviable on tyres bead wire rings in so far as they were used in the manufacture of tyres cleared at nil rate of duty. The adjudicating authority denied the benefit and a demand was confirmed. The appellants filed appeal before the Collector of Central Excise against the adjudication order and the appeal was accepted. In consequence to that acceptance of appeal, they filed refund claim for the period 1.6.88 to 11.12.90. In the impugned order, the refund claim, prior to October 1989, was allowed. In respect of the refund claim, after

October 1989, the Collector of Central Excise (Appeals), in the impugned order held that the duty was not paid under protest as no proper protest was lodged with the Assistant Collector as provided under Rule 233B of the Central Excise Rules.

3. Ld. Counsel, appearing on behalf of the appellants, submits that the refund was filed in consequence to the Order-in-Appeal, Vide which the appeal, filed by the appellants, was allowed. He submits that vide letter dated 19.6.90, the appellants made a protest to the Assistant Collector in respect of duty paid during the period November 89 to May 90. He further submits that a similar protest was lodged with the Collector of Central Excise in respect of duty paid for the period from June to August, 1990. He, further submits that the similar protests were made at the time of deposit of duty in consequence to the adjudication order vide which the demand was confirmed. He submits that the Collector of Central Excise in the impugned order held that the procedure laid down under Rule 233B of the Central Excise Rules was not followed. He submits that the Tribunal in the case of *Jay Chemical Industries v. Collectors of Central Excise, Ahmedabad* held that the procedure laid down under Rule 233B of the Central Excise Rules is directory in nature and not mandatory. He, further, submits that the other objection of the Collector of Central Excise is that the protest was not made with the Assistant Collector of Central Excise. He submits that the Tribunal in the case of *Maneklal Harilal Mills Ltd. v. C.C.E., Ahmedabad* reported in 1997 (95) E.L.T.217 (Tribunal) held that the protest lodged with the Superintendent of Central Excise, who is an officer of the office of the Assistant Collector, is a proper protest and is substantial compliance to Rule 233B of the Central Excise Rules. He, further, submits that the refund, in consequence to the Order-in Appeal passed by the Collector of Central Excise, is in favour of the appellants. He submits that the Hon'ble Bombay High Court in the case of *Rotogravurs v. Union of India* reported in 1992 (57) ETT 407 (Bom.), in a similar situation, held that the consequential relief, due to the assessee, cannot be denied on the ground that procedure under Rule 233B of Central Excise Rules was not complied with. Therefore, he prays that the appeal be allowed.

4. Ld. DR appearing on behalf of the Revenue, submits that as the duty was not paid under protest and the provisions of Rule 233B of the Central Excise Rules were not complied with, the appellants are not entitled for the refund. He,

therefore, prays that the appeal be dismissed.

6. In this case, the refund for the period after October 1989 was disallowed on the ground that the procedure under Rule 233B of the Central Excise Rules was not followed by the appellants. We find that the refund claim was filed in consequence to the Order-in-Appeal in favour of the appellants. The appellants filed various letters, such as dated 19.6.90 to the Assistant Collector at the time of deposit of duty for the period Nov.1989 to May, 90; letter dated 18.9.90 at the time of deposit of duty for the period from June to August, 1990; letter dated 10.10.90, by which duty for the period Sept. 90 was deposited, and letter dated 8.11.90 by which duty for the period October 90 was deposited and vide these letters, the appellants specifically mentioned that they were depositing duty under protest and the protest be treated as under Rule 233B. Therefore, the appellants produced enough evidence to show that every time when they deposited duty in pursuance to the Order-in-Original, they deposited duty under protest. The Tribunal in the case of Jay Chemical Industries (supra), after taking into consideration the decision of the Hon'ble Supreme Court in the case of Mafatlal Industries , held that the procedure laid down under Rule 233B of the Central Excise Rules is directory and substantial compliance would be sufficient. The Hon'ble Bombay High Court in the case of Rotogravurs (supra) held that the substantive right to get refund arises in view of the order passed by the Appellate Collector and even assuming that the procedure prescribed under Rule 233B was not complied with, still that would not disentitle the tax payer from recovering back duty.

7. In the present case, the appellants, at the time of deposit of duty informed the Revenue that they were depositing the duty under protest and in view of the above decisions of the Tribunal and the Hon'ble Bombay High Court, the impugned order in respect of refund for the period after October 1989, passed by the Collector of Central Excise (Appeals), is not sustainable and is set aside. However, it is made clear that the refund is subject to the provisions of unjust enrichment as interpreted by the Hon'ble Supreme Court in the case of Mafatlal Industries (supra). The impugned order is modified, as indicated above, and the appeal is allowed.