

Sirsilk Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-04-1985

Reported in : (1985)(0)LC686Tri(Delhi)

Judge : D Lal, H Syiem, S Jain

Appellant : Sirsilk Ltd.

Respondent : Collector of Central Excise

Judgement :

1. Briefly stated the facts of the case as alleged by the appellants are that the appellants have chemical manufacturing units for the manufacture of Acetone, Acetic Acid, Acetic Anhydride, Ethyl Acetate and Bleached Cotton Linters which fall under Tariff item No. 68-CET and are used in the manufacture of Acetate filament yarn. Acetate Staple Fibre and Acetate tow. Chemicals, namely. Acetic Acid, Acetic Anhydride, Acetaldehyde are either produced by the appellants or purchased from the market. Goods falling under T.I. 68-CET on which excise duty has been paid, if used in the manufacture of other excisable goods falling under any tariff item on which duty is payable are eligible for proforma credit of duty as per Notification No. 201/79 dated 4.6.1979.

2. On 20.11.1979, the appellants wrote to the concerned Superintendent of Excise, inter alia, the following: We have contracted for purchase of Aldehyde. This Aldehyde falling under T.I. 68-CET will be used in the manufacture of Acetic Anhydride.

3. The Superintendent of Excise wrote a letter dated 26.12.1979 to the appellants informing that since they would use Aldehyde for the manufacture of Acetic Acid, they would not be entitled to proforma credit in respect of the duty paid on Aldehyde. The said Superintendent of Excise by his letter dated 8.2.1980 again rejected the request of the appellants by giving the following reasons: Acetaldehyde purchased is mixed with the Acetaldehyde manufactured in the Appellant's factory and no duty is paid on the Acetaldehyde manufactured in the Appellant's own factory.

4. Aggrieved by the said letters of the Superintendent of Excise, the appellants tiled an appeal (A. No. CE 112/80-H) before the Appellate Collector, Central Excise, Bombay, who by his Order No. 381/80 dated 3.11.1980, dismissed the said appeal.

5. In pursuance of the Order passed by the Appellate Collector of Central Excise, the Superintendent of Central Excise, Sirpurkaghaznagar-II passed the following order on R.T.12 filed by the appellants for November 1980: 1. The assessee has paid the duty on the above goods correctly except to the extent indicated below: 1. The assessee is not permitted to avail the proforma credit in r/o Acetaldehyde in terms of Notification No. 201/79-C.E. of 4.6.1979 vide Appellate Collector's A. No. C.E. 112/80H Order-in-appeal 381/80 dated 3.11.1980. Hence the proforma credit availed till date should be reccredited by raising debit in the P.L.A. Besides, the balance of Rs. 2,13,649.42 as at the end of November 1980 is expunged.

2. The proforma credit is not also permitted in r/o Acetic Acid, under Notification No. 201/80 of 13.10.80 rejecting their revision application in this regard. Therefore, the proforma credit availed of during November should be reccredited by raising a debit in their PLA within 10 days. Besides the balance of Rs. 32,500.27 as at the end of November 1980 is expunged.

6. Not satisfied with the said Order of the Superintendent of Central Excise, the appellants filed an appeal before the Appellate Collector of Central Excise, Camp: at Hyderabad, on 23.12.1980. The Appellate Collector rejected the said appeal by his Order No. 106/81 dated 4.3.1981 (S.No. 588/80-CE II) holding that in view of the provisions of Rule 173-1, the appellants should in the first instance pay up the

amount as demanded by the proper officer.

7. Aggrieved by the said order of the Appellate Collector of Central Excise, the appellants filed a Revision Application on 3.6.1981 before the Government of India, Ministry of Finance (Department of Revenue) and also filed Supplementary Revision Application on 20.10.1982. The said Revision Application now stands transferred to this Tribunal under Section 35P(2) of the Central Excises & Salt Act, 1944, and is treated as an Appeal.

8. We have heard Shri D.N. Kohli, Consultant for the Appellants and Shri A.S. Sunder Rajan, JDR for the Department and gone through the records. The learned consultant for the appellants submitted that the Appellate Collector has exceeded his jurisdiction by not considering the appeal on merits and rejecting the same on the ground that the duty demanded was not paid by the appellants. According to Shri Kohli at the relevant time there was no provision in the Central Excises & Salt Act, 1944, requiring the appellants to deposit, pending appeal, the duty demanded or penalty levied. It is for the first time that by the Finance Act 1980, this provision as contained in Section 35F was incorporated in the Central Excises & Salt Act, 1944, which came into effect from 11.10.1982. The provisions of Rule 173-I of the Central Excise Rules, 1944 are not meant for this purpose. By demanding payment of duty assessed, the Appellate Collector has whittled down the right of appeal under Section 35 of the Central Excises & Salt Act, 1944.

According to Shri Kohli, the demand of payment of duty as assessed by the proper officer in this case was treated by the Appellate Collector as "Procedure relating to appeals" and as such his order is arbitrary and biased. He drew our attention towards a decision of the Supreme Court in the case of Collector of Customs and Excise, Cochin v. A.S.Bawa reported in 1978 ELT 1973 : 1973 Cen-Cus. Aug. xviii-ECR C 252 S.C. in support of his contention that the Appellate Collector has exceeded his jurisdiction by not considering the appeal on merits and rejecting the same on the ground that the duty was not paid by the appellants. According to their Lordships of the Supreme Court, a provision which is calculated to deprive the appellants of the unfettered right of appeal is calculated to interfere with or fetter the substantive right.

9. Shri Sunder Rajan, the departmental representative pointed out that appellants have misused the process of law. According to Shri Sunder Rajan, the order passed by the Superintendent of Central Excise on RT-12 of November 1980 was on the basis of the order of the Appellate Collector No. 381/80 dated 3.11.1980 which had become final qua the parties. This is not a new order which could be assailed by the appellants by filing an appeal before the Appellate Collector. The Appellate Collector, in his Order in Appeal No. 381/80 dated 3.11.1980, dismissed the appeal by giving full reasons on the merits of the case.

The order passed by the Superintendent of Central Excise on R.T.12 is not appealable order.

10. Without going into the merits of the case, we have to see whether the Appellate Collector was justified in refusing to hear the appellants on merits only on the plea that the appellants had not paid the duty amount in view of the provisions of Rule 173-I of the Central Excises Rules, 1944.

11. In this connection, we would like to produce the provisions of Rule 173-I of the Central Excise Rules, 1944 which are as under: The proper officer shall on the basis of the information contained in the return filed by the assessee under Sub-rule (3) of the Rule 173-C and after such further inquiry as he may consider necessary, assess the duty due on the goods removed and complete the assessment memorandum on the return. A copy of the return so completed shall be sent to the assessee.

(2) The duty determined and paid by the assessee under Rule 173-F shall be adjusted against the duty assessed by the proper officer under Sub-rule (1) and where the duty so assessed is more than the duty determined and paid by the assessee, the assessee shall pay the deficiency by making a debit in the account-current within ten days of receipt of copy of the return from the proper officer and where such duty is less, the assessee shall take credit in the account-current for the excess on receipt of the assessment order in the copy of the return duly countersigned by a Superintendent of Central Excise.

12. A perusal of this rule shows that it cannot be treated as "Procedure relating to appeals".

13. This rule only says that the duty determined and paid by the assessee under Rule 173-F shall be adjusted against the duty assessed by the proper officer under Sub-rule (1) of the Rule 173-1 and where the duty was assessed is more than the duty determined and paid by the assessee, the assessee shall pay the deficit by making a debit in the account current within 10 days of the receipt of copy of return from the proper officer and where such duty is less, the assessee shall take credit in the account current for the excess on receipt of the assessment order in the copy of the return duly countersigned by the Superintendent of Central Excise. This rule has nothing to do with the provisions of deposit, pending appeal, of duty demanded or penalty levied. At the relevant time there was no provision under the Central Excises & Salt Act, 1944 requiring the appellants to deposit, pending appeal, of duty demanded or penalty levied. It is for the first time by the Finance Act, 1980, Section 35-F was incorporated in the Central Excises & Salt Act, 1944 which requires the deposit, pending appeal, of duty demanded or penalty levied. The provisions of Section 35F came into force only with effect from 11.10.82. When there was no such provision of depositing the duty amount pending appeal, the Appellate Collector should not have insisted upon the deposit of the duty amount before hearing the appeal on merit. It was the job of the other Excise authorities to recover the duty amount due from the applicants. The Hon'ble Supreme Court in the case of Collector of Central Excise, Cochin v. A.S. Bawa (supra) after examining the entire matter, came to the conclusion that a provision which is calculated to deprive the appellants of the unfettered right of appeal cannot be regarded as a mere alteration in procedure. Indeed the new requirement cannot be said merely to regulate the exercise of the appellant's pre-existing right but in truth whittles down the right itself and cannot be regarded as a mere rule of procedure.

14. In view of this decision of the Hon'ble Supreme Court, we set aside the impugned order passed by the Appellate Collector on 4.3.1981 and remand the case back to the concerned Collector (Appeals), Bombay, to dispose of the appeal on merits. The Collector (Appeals) shall dispose of the appeal as early as possible

but not later than the six months from the date of receipt of this Order.

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