Commissioner of Central Excise Vs. Kothari Products

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-02-2000

Reported in : (2001)(73)ECC252

Appellant : Commissioner of Central Excise

Respondent : Kothari Products

Judgement :

1. These two appeals have been filed by the Revenue against the common order in appeal dated 20-1-2000 passed by the Commissioner (Appeals) vide which he had reversed the order-in-original dated 4-6-1999 disallowing the refund claims of the respondents.

2. The facts giving rise to these appeals may briefly be stated as under : 3. The respondents are engaged in the manufacture and clearance of the pan masala/gutaka falling under Chapter Heading 2106.00 of the CETA.They are also availing the Modvat credit facility on the raw material/packing material used in the manufacture of the pan masala.

They lodged two refund claims of Rs. 8,91,196/- and Rs. 81,600/- under Rule 173L of the Central Excise Rules on the ground that the goods earlier cleared by them on payment of duty were received back in the factory premises due to reddish colour and they after refining/reconditioning the same by mixing the fresh material, cleared the same again on payment of duty. They claimed the refund for having paid the duty twice on the same goods. The Assistant Commissioner rejected both the refund claims on the ground that none of the processes mentioned in Sub-rule (1) of Rule 173L of the Rules was carried out on the returned goods (pan masala) as the mixing of the returned pan masala, with the fresh material did not amount to reprocessing/remaking/refining and that the returned goods had no commercial value. This order by the Assistant Commissioner was challenged by the respondents before the Commissioner (Appeals) who through the impugned order reversed the same and allowed both the refund claims of the respondents subject to the reversal of the Modvat credit involved on the damaged inputs.

4. The Revenue has come up in appeal against the impugned order of the Commissioner (Appeals) before the Tribunal.

5. The learned JDR has assailed the order of the Commissioner (Appeals) on the ground that the process of remixing of the returned goods with the fresh material did not fall within the ambit of Rule 173L of the Rules and that the returned goods had no commercial value. Therefore, such no refund claim could be allowed to the respondents.

5. On the other hand, the learned counsel while refuting this contention of the learned JDR has contended that both the points raised by the learned JDR had already been considered and rejected by the Tribunal in the respondents own similar two appeals in which the refund claim was involved, and that there is no material also on the record to substantiate the contention of the learned JDR.6. It has not been disputed before us by the learned JDR that in the earlier similar two refund claims based on these very facts, on which the present refund claims were lodged by the respondents, these very grounds were taken by the Revenue for disallowing the same, but those were not accepted by the Tribunal. The perusal of the copy of the order of the Tribunal Nos. A/1061 -63/99-NB(DB) dated 24-11-1999 [2000 (116) E.L.T. 497 (T)] produced by the counsel for the respondents, shows that the Tribunal had taken the view that the process of remixing of the fresh material with the damaged returned goods, by the respondents was not prohibited by any express or implicit provision of Rule 173L of the Rules.

7. The contention of the Revenue that the returned goods had no commercial value and that the goods cleared second time after refining or reconditioning were

of much more value and quantity, than the returned goods, was also considered by the Double Member Bench of the Tribunal in the above referred order passed in respondents' own case and also in another Order No. A/563/97-NB(SM) dated 10-7-1997, but not accepted for want of any evidence/material on record. Both these orders of the Tribunal remain unchallenged and as such are binding on the Revenue. In the instant case also except for the version of the Revenue in the grounds of appeal, there is nothing on record to suggest if the damaged goods received by the respondents had no commercial value and that the quantity after refining or reconditioning or remixing cleared by them was more than the one cleared by them earlier. That being so, the contention of the learned JDR in this regard cannot be accepted.

The respondents had already been directed by the Commissioner (Appeals) through the impugned order that they must reverse the Modvat credit before getting the refund.

8. In view of the discussion made above, there is no merit in both the appeals filed by the Revenue and the same are ordered to be dismissed.