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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-13-2000

Reported in : (2001)(128)ELT376TriDel

Appellant : Ace Laboratories Ltd.

Respondent : Commr. of C. Ex.

Judgement :

1. This appeal is directed against orders of the lower authorities rejecting their three refund applications amounting to over Rs. 27 lakhs. The appellants are manufacturers of P&P medicines. Such medicines when sold to the domestic market are liable to Central Excise duty under Tariff item 3003.10. The appellant exported part of their production under bond. At the time of clearance of the goods under AR-4As, the goods were classified under Tariff item 3003.10 and assessed to duty. However, the goods were exported without payment of duty under bond. Thus, there was no dispute at the time of export of the goods that the goods were P&P medicines and that they were liable to payment of Central Excise duty.

2. The appellants had taken Modvat credit of the duty paid by them on the inputs which had gone into the production ol the export goods. That credit could not be utilised as the final products got exported. Under Rule 57F(4) such balance credit on account of the export of final products can be either utilised for payment of duty on other goods cleared for domestic market or claimed as refund. The appellants used :art of the outstanding Modvat credit for payment of duty on other goods. This was not objected to by the Central Excise authorities.

However, when they claimed refund of the remaining amount, the same was rejected holding that the goods that had been exported were not P&P medicines.

3. The appellants contend that the goods exported by them were the same as the goods which were being cleared to the comestic market as P&P medicines. There is no basis to the allegation that the exported goods were not P&P medicines. They also submit that after having classified the goods and assessed the goods at the time of removal from he factory for export as P&P medicines it was not open to the Revenue thereafter to contend that these goods were not P&P medicines, their classification was wrong and that Modvat credit should not have been taken on the inputs utilised in the production of those goods. The appellants have relied on the decision of this Tribunal in the case of CCE v. National Fertilisers Ltd. [1990 (48) E.L.T. 562] in support of this contention.

4. We have heard the ld. Counsel representing the appellant as well as the ld. DR. The DR stressed that the Order-in-Original as well as Order-in-Appeal contained clear findings that the goods undsr export were not P&P medicines and therefore they were exempted from duty as no Modvat credit is available in cases where final products are exempt from duty. He submitted that since they were exempted from duty, the appellants could not avail themselves of Modvat credit in respect of inputs or claim refund of Modvat credit wrongly availed of.

5. It is clear from the record of this case that the goods were classified and assessed at the time of removal for e::port as P&P medicines. Bond has also been executed by the appellant binding himself to pay duty for the goods which were cleared for export. It is also clear that the same goods are cleared to the domestic market on payment of duty as P&P medicines. In these circumstances, it is futile for the Revenue to contend later on that the goods were not P&P medicines. This Tribunal has also held in the case of National Fertilisers Ltd. (supra) that Classification List once approved cannot be changed with retrospective effect so as to deny the Modvat credit already taken in respect of inputs. In these circumstances, we are not able to find any legal or factual basis for the denial of the refund claim of the appellant. The appeal is accordingly allowed. It is ordered that the refund claimed by the appellant be paid to him forthwith as the export

related to the period 1995-1997 and several years have passed without the appellant being able to make use of the Modvat credit which he had rightly earned in respect of duty paid inputs.

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