Vinar Limited Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-26-1985

Reported in : (1985)LC1831Tri(Delhi)

Judge : S Venkatesan, I Rao, V Raghavachari

Appellant : Vinar Limited

Respondent : Collector of Central Excise

Judgement :

1. All the three appeals were originally filed as revision applications and on transfer to the Tribunal are being dealt with as appeals. These appeals are being considered together as they involve common points and are preferred by the same appellant.

2. These revision applications were against the common order of the Appellate Collector of Central Excise, Calcutta (Orders No. 36 to 38, dated 30.1.78. We heard on 11.3.85 the appellants in appeal No. 1528/ 8O-Dand-1529/84-D. Appeal No. 357/80-D could not be taken up for hearing that day along with the two other appeals since the relevant Order-in Original had not been filed till then. The appellants had agreed to file the said Order-in-Original and other necessary records if any and at that time to indicate whether they wanted a separate hearing for that appeal or whether they would like it to be decided on the basis of the arguments advanced in the other two appeals.

Subsequently, the appellants have filed the Order-in-Original and a copy of their letter dated 17.12.1971 with a covering letter in which they had indicated that Appeal No. 357/80-D may also be decided along with the other two appeals. Therefore, no further hearing was held in respect of that appeal as the same is to be disposed of with reference to the submissions already made. Accordingly, this order deals with and disposes of all the three appeals.

3. The appellants M/s Vinar Limited received two show cause notices (i) dated 30.10.73 and (ii) dated 28.8.1975 demanding duty on clearance of art silk fabrics. The periods and grounds covered under the two notices and provisions of Law under which they were issued are as follows: 4. The show cause notices were issued on the basis that after removal of fabrics from the bonded store room for re-cutting, the entire quantity was not received back in the store room as sound fabrics. The allegation was that the fabrics were converted into fents and rags which were subsequently cleared under Nil duty gate passes. The Department was of the opinion that re-cutting cannot be termed to be re-processing or re-conditioning and hence the resultant fents and rags did not attract the benefit of exemption under Notification No. 116/68, dated 14.5.68.

5. The appellants contended that they had removed the goods after proper accountal in the statutory records and that they had been doing so after communicating the necessary facts to the concerned officers and after obtaining orders also approving of the procedure adopted by them. They further contended that their clearances from the bonded store room as well as subsequent clearance of the sound fabrics and of the fents and rags were all duly accounted in their RG-I Register as well as RT 12 Returns and there had been no suppression of any fact at any time and for that reason also the show cause notices were time barred.

6. After adjudication the Assistant Collectors concerned rejected the contentions of the appellants and confirmed the demands made under the respective show cause notices. The appeals by the appellants were rejected by the Appellate Collector of Central Excise, Calcutta under Order dated 30.1.79. The appellants preferred revision petitions to the Government and these, on transfer, are being dealt with and disposed of as appeals before this Tribunal.

7. It is argued before us that the appellants were entitled to cut damaged portions of art silk fabrics into fents and rags and to clear them without payment of duty as provided by law. It was also submitted that the appellants lost, by way of reduced value of the fabrics, a larger amount as compared to the duty they might have saved by cutting the fabrics into fents and rags. Further, it was emphasized that Rule 10-A has no application to the facts of the case inasmuch as they wrote to the Central Excise authorities for permission to re-process the textiles and obtained the same. Besides, they made entries in RG-I Register and they gave full particulars in RT 12 Returns which were approved by the Central Excise authorities. The appellants vehemently argued that the demands are time barred, Rule 10-A not being the appropriate rule.

8. Inasmuch as the question of limitation was pressed, we take it up first for consideration. As per submissions made by the appellants and as recorded in the Assistant Collector's Orders the position of rules invoked in each case is as follows: (i) In appeals Nos. 357/80-D and 1529/84-D, the show cause notice was issued invoking Rule 10-A and orders were passed demanding duty under the same rule.

(ii) In Appeal No. 1528/84-D, show cause notice was issued invoking Rule 10 of Central Excise Rules and the demand was confirmed under Rule 9 (2) read with Rule 173-G (1) of the Central Excise Rules.

9. The appellants argued that Rule 10-A should not have been invoked in this case as also Rule 9(2) as the clearance of the goods by the appellants was not clandestine and the Central Excise Officers all along knew about the same. If at all there was any short levy, they submitted, it could be recovered only under Rule 10 within the normal period of limitation and not under any other rule. In this context they relied on the judgment of the Supreme Court in the matter of N.B.Sanjana, Assistant Collector, Central Excise, Bombay and Ors. v. The Elphinstone Spinning and Weaving Mills Co. Limited ECR C 368 SC. They referred to their letter dated 17.12.71 under which they informed the Superintendent of their intentions to re-cut several quantities of their goods as they were not saleable in the market and became damaged in the store room. They pointed out that in reply thereof, the

Superintendent in his letter dated 10.1.72 had permitted them to take the damaged fabrics from their bonded store room for re-processing or re-conditioning and to make suitable remarks in their RG-I and to maintain proper accounts with reference thereto. But in this connection, as the learned DR pointed out, this correspondence relates to a period subsequent to the period covered by the show cause notices.

The DR, therefore, rightly pointed out that the removal during the periods covered by the show cause notices could not be co-related to any permission granted by the Superintendent under his letter.

10. It however cannot be overlooked that the claims of the appellants that proper account was kept for the textiles removed from the store room, brought back and cleared as fents and rags, has not been disputed. In fact, the authorities below did not find against the appellants in this regard as no observation was made that the appellants cleared the goods without maintaining accounts. The fents and rags were also admitted cleared under Nil duty gate passes. RT-12s were also filed. The impugned orders do not show any basis which would justify the application of Rule 10-A which can be invoked only when the duty cannot be recovered under any other rule. In the circumstances, the present case appears to be one of short levy which could be recovered under Rule 10 and that, therefore, Rule 10-A could not be invoked. In all the three appeals recovery could have been made only under Rule 10 and not under Rule 10-A.11. In so far as Appeal No. 1528/84-D is concerned, show cause notice was issued invoking Rule 10 and the demand was confirmed under Rule 9(2) read with Rule 173G(1) of the Central Excise Rules. We have examined Rule 173G(1). This rule provides for the maintenance of account current and prescribes the method of maintaining the same. Rule 9(2) is also not applicable inasmuch as there was no clandestine removal and we had already held that the duty was demandable under Rule 10. Therefore, we hold that the show cause notice in this appeal also was time-barred. In view of this, we are not going into the other merits of the matter.

12. As a result we allow all the three appeals on the ground of time bar.