Tide Industries Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-22-2001

Reported in : (2001)(133)ELT426Tri(Mum.)bai

Appellant : Tide Industries

Respondent : Commissioner of Central Excise,

Judgement :
1. The appellant manufactures shoe polishes and creams. It draws samples from every bath of each of these products, and keep them so as to be available in case of any complaint regarding the quality of the product for two years after which they are brought back to the factory and mixed with goods under process and then cleared on payment of duty.

In the order impugned in the appeal, the Commissioner, adjudicating upon a notice issued to the appellant, held that duty is to be payable on these samples when they are initially removed to the laboratory.

Hence this appeal.

2. The contention of the representative of the appellant is that the law is very clear that duty is to be payable on excisable goods when they are removed from the place of production. The laboratory was approved in the ground plan that the appellant submitted as being part of the factory, the place of production. There has therefore been no removal from the factory. These samples were therefore not

removed from the factory when they were taken to the laboratory. When they were latter actually so removed, duty was paid. He emphasises that on four earlier occasions the Commissioner (Appeals) has set aside the order of the Assistant Collector confirming the demand. On three other occasions the Assistant Collector has dropped the demands. The departmental representative attempts to contend that the fact of seven orders having been passed in respect of the appellant is irrelevant. On merits, he refers to the provisions of Rule 49.

3. We do not see how this helps. Sub rule (1) of Rule 49 provides that payment of duty shall not be required in respect of excisable goods made in a factory until the goods are about to be issued out of the place or premises specified under Rule 9 or are about to be removed from a store room or other place of storage approved by the Commissioner under Rule 47. Rule 9 refers to place where the excisable goods are produced, cured or manufactured to "or any premises appurtenant thereto which are specified by the Commissioner." The department's own instructions in this regard, contained in page 114 of the Basic Manual of Departmental Instructions on Excisable Manufactured Products, provides that subject to proper account being kept, samples may be drawn and no duty should be charged on these samples. It also permits them to be destroyed. This paragraph 114 (2) reflects the department's own understanding of the provisions of law and amounts to contemporaneous exposition of the law. The fact that seven times in the past the department's own officers have come to the same conclusion make it clear that they also understood the law and applied it in this manner.

4. On merits, therefore, it is entirely clear that the department has no case. The Commissioner's statement that earlier orders are for different periods is a feeble attempt to justify his action. The law on the subject not having changed, why the earlier orders which not having been appealed, have been found to be correct by the department should be ignored is not even attempted to be answered by him. We would strongly advise the departmental authorities that, when the matter has been settled many times over, as this has been, it is extremely improper persisting in a contrary course of action, causes unnecessary hardship to an assessee and avoidable bad feeling towards the department. After all there was nothing to stop the department from appealing the earlier orders if it felt they were incorrect. The

fact that they have been accepted in seven cases emphasises and the department found them to be correct.