Magna Inks Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-28-2002

Reported in : (2002)(145)ELT619TriDel

Judge : B T K.K.

Appellant : Magna Inks Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants manufacture 'Inked Ribbon' in cassettes, spools etc.

falling under Chapter Heading No. 9612.00. During the period from February, 97 to September, 97, the departmental authorities called upon them to pay duty on this item. Accordingly, the party paid the duty on them but contested such levy. They filed appeal and finally, the CEGAT vide its Final Order No. 791-799/99-C dt. 2-9-99 held that the process of putting inked ribbon in spools/cassettes/cartridges undertaken by them would not amount to manufacture and allowed their appeal.

Consequently, they filed a refund claim for Rs. 1,06,349/- on 26-11-99 with the Dy. Commissioner of Central Excise Dn. II, Indore for the duty paid by them during the period from 14-2-97 to 10-3-97. The appellants in their refund claim asserted that the duty was paid by them under protest. The Dy. Commissioner of Central Excise Dn. II, Indore however vide his Order dated 18-8-2000 rejected the claim of the party on the grounds of time bar under Section 11B of the Central Excise Act, 1944.

The Dy. Commissioner in his order observed that no specific letter of duty paid under protest was written to the jurisdictional Asst./Dy.

Commissioner as required under Rule 233 B(l) of the Central Excise Rules, 1944. The Dy. Commissioner in his order observed that this rule provides that when an assessee who desires to pay duty under protest, he shall deliver a letter to the proper officer to this effect and give grounds of payment of duty under protest. In the absence of any such letter written by the party, he rejected the plea of the party regarding payment of duty under protest and held the claim of refund as barred by time.

2. The party filed an appeal but the same is rejected by Commissioner (Appeals), Bhopal vide his Order dated 10-8-2001.

3. This is an appeal against the impugned order of Commissioner (Appeals). I have heard Shri Ramesh Nair, Advocate for the appellants and Shri H.C. Verma, JDR for the respondents. I have considered the submissions made before me. It is observed from the facts on record that the appellants since very beginning were questioning the levy of duty on the inked ribbons made by them. In this they ultimately succeeded before the CEGAT and the CEGAT vide its Final Order dated 2-9-1999 held that the process of putting inked ribbon in spools/cassettes/cartridges would not amount to manufacture. In support of their contention that the duty during the impugned period was paid under protest the appellants have filed a copy of their letter dt.

18-2-97 addressed to the Supdt. of Central Excise Range-I, Pitampura at the time of taking out the registration for the manufacture of their product. This letter reads as under :- "Please find enclosed herewith our application for registration.

Since this application is filed in pursuance of adjudication orders passed by Hon'ble Commissioner of Customs & Central Excise, Indore, in spite of the fact that in the instant case, we have been granted the stay by the Hon'ble CEGAT and strong opinion that the activity carried out by us does not amount to manufacture.

Therefore, this registration is "Under Protest".... You are therefore requested to issue registration certificate "UNDER PROTEST" and oblige." 4. The above letter of the appellants sufficiently fulfils the requirement of the provisions of Rule 233B(1) and the duty paid by the appellants during the period from February, 97 to September, 97 is considered to have been paid under protest. The refund claim filed by the party therefore is not time-barred.

5. The impugned order passed by the Commissioner (Appeals) is therefore set aside and the appeal is allowed with consequential relief.