

Simplex Global Impex Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-13-2002

Reported in : (2002)LC114Tri(Delhi)

Judge : A T V.K.

Appellant : Simplex Global Impex

Respondent : Commissioner of C. Ex.

Judgement :

1. In this appeal filed by M/s. Simplex Global Impex, the issue involved is whether rebate of Excise duty paid on the goods exported by them is admissible to them or not.

2. Shri P.K. Sahu, Id. Advocate, submitted that the appellants are merchant exporter of HDPE/PP sacks; that during the period December, 1999 to February, 2000, they had purchased excisable goods on payment of duty from six different manufacturers and exported the same on 18-2-2000 and 7-3-2000; that they filed their claim towards rebate of duty on the excisable goods exported in terms of Rule 12(1)(a) of the Central Excise Rules, 1944; that the refund of the duty has been denied on the ground that the claim is hit by time- limit specified under Section 11B of the Central Excise Act; and that the Disclaimer Certificate was filed later at the time of personal hearing whereas it was required to be submitted with AR4 only. The Id. Advocate, further/ submitted that the claim is not time-barred as the period specified under Section 11B of the Central Excise Act is one year from

the relevant date; that the relevant date in respect of goods exported is the date on which the ship or the aircraft leaves India; that when the refund claim was filed by them amended Section 11B has come into force.

He relied upon the Board's Circular No. 555/51 /2000/CX-1, dated 19-10-2000 wherein it is mentioned that the limitation period of one year under Section 11A is to be reckoned from the date of notice when it is issued after the amendment and this would apply to all clearances occurring within that period. He contended that similar logic would apply as similar amendment was made in Section 11B of the Central Excise Act. Regarding Disclaimer Certificate, the Id. Advocate relied upon the Board's Circular No. 428/61/98-CX., dated 2-11-98 wherein it was clarified that Disclaimer Certificate is essential where exports are effected directly from the factory of manufacture by Merchant Exporter and where the goods initially cleared from the factory on payment of duty for home consumption are diverted for export following the procedure contained in Board's Circular No. 294/10/97-CX dated 30-1-97, the Merchant Exporter can alone claim rebate and that in view of this the Board further, clarified that rebate under Rule 12 will be granted without insisting for Disclaimer Certificate where the goods are diverted after clearance for home consumption for export. Finally he relied upon the decision in the case of Birla VXL Ltd. v. CCE, Chandigarh - 1998 (99) E.L.T. 387 wherein it was held that the provisions under Rule 12A of the Central Excise Rules being followed by proviso relaxing the requirement thereof are directory in nature and not mandatory.

3. Countering the arguments Shri H.C. Verma, Id. DR, submitted that the Export had taken place on 18-2-2000 and 7-3-2000 when the period specified in Section 11B of the Act for claiming rebate was six months and such refund claim has been filed on 1-11-2000 which is beyond six months period the claim is time-barred. He also reiterated the finding of the Commissioner (Appeals) that the Disclaimer Certificate was required to be submitted by the manufacturer in favour of the Exporter on AR 4 itself which is missing and the Boards Circular dated 2-11-98 is not applicable inasmuch as the appellants have not produced any evidence to show that they had exported the goods which are initially cleared for home consumption.

4. I have considered the submissions of both the sides. Section 11B of the Central Excise Act was amended by Section 101 of the Finance Act, 2000 with effect from 12-5-2000. After the amendment, the refund claim is required to be filed before the expiry of one year from the relevant date. As the refund claim has been filed on 1-11-2000, the claim has been filed within one year of the expiry of the export of the excisable goods. There is no force in the contention of the Department that only six months period will be applicable as the goods were exported by the appellants in February-March, 2000 when the Section contained the period of only six months. The validity of the refund claim has to be adjudged in the light of provision as it exists at the time refund claim is filed and not on the basis of law in existence at the time goods were exported. This was the clarification issued by the Board under Circular No. 555/51 /2000-CX. 1, dated 19-10-2000 in respect of similar amendments carried out under Section 11A of the Act. I, therefore, hold that the refund claim by the appellant is not hit by time-bar. The requirement of Disclaimer Certificate is not a substantive requirement for sanction of the refund claim. Moreover, in the present matter, the Disclaimer Certificate has been provided by the appellants at the time of personal hearing before the Deputy Commissioner and as such the requirement of filing Disclaimer Certificate is substantially complied with. Further, it has been held by the Tribunal in the case of Birla VXL Ltd. (supra) that "having regard to the fact that there is categorical finding about the same goods as had paid duty being exported and the documents being available with the appellants, we hold that rebate of duty is admissible to the appellants". In the present matter it is not a case of the Department that the goods were not duty paid or goods were not exported or the manufacturer of the goods had claimed any rebate. In view of this, I hold that rebate of Central Excise duty paid on the goods exported cannot be denied to the appellants. The appeal is thus allowed.