

Commissioner of Customs Vs. Dcl Polyesters Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-26-2002

Reported in : (2002)LC232Tri(Mum.)bai

Judge : J Balasundaram, S T S.S.

Appellant : Commissioner of Customs

Respondent : Dcl Polyesters Ltd.

Judgement :

1. The above three appeals involve common issues and are hence heard together and disposed off by this common order.

2. The brief facts of the case are that on 10-8-1992 and 19-10-1992 M/s. DCL Polyester Limited (hereinafter referred to as the importers) were issued two Value Based Advance Licences. In December, 1994 and January, 1995 they completed the export obligation under VBAL licences by using inputs namely PTA (Purified Terephthalic Acid), MEG (Mono Ethylene Glycol), TIO₂ (Titanium Dioxide) and by exporting polyester synthetic filament yarn (non-textured). In February, 1996 their plant was visited by the Preventive Officers of the Nagpur Commissionerate and they were directed to reverse an amount of Rs. 1,17,00,296/- worked out on the basis that Modvat credit of Rs. 64,90,252/- and Rs. 52,10,039/- was availed towards both the above VBAL licences on the entire quantity of inputs required for the manufacture of the export products. In August, 1996 DCL Polyester applied for refund of Rs. 1,11,75,467/- on the ground that reversal of the above mentioned

amount was improper and in excess, and no refund was claimed for the balance amount of duty of Rs. 5,24,829/-. On 1-11-1996 show cause notice was issued by the Assistant Commissioner of Central Excise proposing rejection of refund claim inter alia on the ground that the reversal was done only with a view to fulfil the condition of Notification 203/92, dated 19-5-1992 which provided for duty free import subject to the condition that no Modvat credit of duty paid on inputs was availed; and since the importers had claimed the benefit of such notification they were not entitled to the refund of the reversal made by them. By the order-in-original dated 26-11-1996 the Assistant Commissioner of Central Excise, Bhandara Division passed an adjudication order sanctioning the refund claim. On 10-1-1997 Central Excise and Customs announced the amnesty scheme providing for reversal of Modvat credit and payment of interest where exports were effected under VBAL up to 31-1-1997. On 31-1-1997 the importers informed the Excise authorities that they had paid interest of Rs. 2,00,849/- on the amount of Rs. 5,24,829/-availed and reversed and not claimed by way of refund. The order of the Assistant Commissioner by which refund was sanctioned was reviewed by the Commissioner of Central Excise (Appeals), who, vide the order dated 8-5-2000 allowed the department's Review Application against order dated 26-1-1996 granting refund. It is against this order that the manufacturer has filed appeal No. E/1837/2000-Mum.

3. In the meanwhile on 23-5-1997 the Assistant Commissioner of Central Excise, Bhandara Division, issued a notice to the importer under Section 11(A) of the Central Excise Act, 1944 proposing to recover the refund amount of Rs. 1,11,76,467/- which was adjudicated by order dated 25-7-2001 of the Commissioner of Central Excise confirming the duty demand. Against this order the manufacturer has filed an appeal E/3260/2001-Mum along with the stay application.

4. Simultaneously with the proceedings under the Central Excise Act, 1944, proceedings under the Customs Act were initiated by issue of show cause notice dated 9-7-1997 by Commissioner of Customs, Kandla proposing recovery of customs duty of Rs. 79,54,491/- on imports cleared duty free under the two VBAL licences on the ground of contravention of condition No. v (a) of notification 203/92

by availment of credit of duty paid on inputs. The notice was contested by the manufacturer by pointing out that the condition had been fulfilled as the credit of Rs. 5,24,829/- availed by them had been reversed and interest thereon was also paid before the cut off date stipulated in the amnesty scheme. In January, 1998 the Commissioner of Customs adjudicated the notice by dropping the demand; this order was reviewed by the CBEC. Challenging the order dropping the proposed confiscation and penal action, and Revenue has filed appeal C/400/1999-Mum.

5. Taking up the Revenue's appeal first, which is the earliest in point of time, we find that the order passed by the Board as well as the grounds in the appeal of the department do not refer to any material or evidence to show that the findings of the Commissioner that the amount of credit taken by the respondents on inputs used in the manufacture of export products was only Rs. 5,24,829/- was incorrect or inadequate.

All that the appeal states is that the Commissioner should have called for other statutory excise records such as RG 23A Part I and II, Form IV and private records before coming to the conclusion that the importers had not availed any further Modvat credit under Rule 57A. This contention is clearly unsustainable and it is not the department's case in the appeal that such examination having been carried out by the Revenue after passing of the impugned order of the Commissioner, the reversal made by the respondent had been found to be incorrect. The respondents have clearly explained that they have reversed credit of Rs. 5,24,829/- in respect of duty paid on inputs such as PTA (Purified Terephthalic Acid), MEG (Mono Ethylene Glycol), TIO₂ (Titanium Dioxide), and used towards export obligation and since the balance inputs were replenished without payment of duty under VBAL, they are not required to reverse the credit in respect of those inputs. Further the Commissioner satisfied himself on perusal of certificates issued by the Superintendent of Central Excise that the importers had not availed Modvat credit in respect of certain AR4s covering inputs used in the manufacture of export products under DEEC. There is no basis for the Department's stand that the order of the Commissioner is not correct.

Therefore we dismiss appeal No. C/400/1999-Bom of the Revenue.

6. In view of the above we accept the contention of the importers that the correct amount required to be reversed and actually reversed by them was only Rs. 5,24,829/-. Since the importers had reversed the above mentioned amount and also paid interest thereon within the amnesty period i.e., 31-1-1997 the condition of Notification 203/92, dated 19-3-1992 stood fulfilled and the importers were entitled to refund of the excess reversal of Rs. 1,11,75,467/- made by them. We therefore set aside the order of the Commissioner of Central Excise (Appeals) and allow appeal No. E/1837/2000-Mum and set aside the confirmation of duty demand and allow the appeal No. E/3260/2001-Mum.

7. In the result the appeal of the Revenue is rejected while the appeals of the importers are allowed.

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