

Metal Strips Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-19-2003

Reported in : (2004)(91)ECC47

Judge : S Kang

Appellant : Metal Strips

Respondent : Cce

Judgement :

1. Heard both the sides. The appellants filed a refund claim of Rs. 45,000 as one cold rolled machine was dismantled for three months and they had paid duty under protest in respect of this machine.

2. The appellants were working under the Compounded Levy Scheme as per the duty assessed by the Commissioner of Central Excise. They applied for dismantling of machine for three months and the necessary permission was granted by the Commissioner of Central Excise vide letter dated 25.5.98. Accordingly, the machine was dismantled. However, on asking of the Revenue, they paid duty and thereafter filed refund claim which was rejected. The contention of the appellant is that the machine was dismantled for three months i.e., from 1.7.98 to 30.9.98 with due permission from the competent authority. Therefore, for three months they are not liable to pay any duty. The appellants relied on the decision of Jupiter Industries v. CCE, Jaipur, 3. The contention of the Revenue is that no refund is permissible in view of the proviso of Sub-rule (2) of Rule 96-ZB(1)

of Central Excise Rules.

4. The undisputed fact of the case is that the appellants were paying duty under the Compounded Levy Scheme and in respect of one cold rolling machine, they applied to the Commissioner of Central Excise for dismantling the same. The permission was granted vide letter dated 25.9.98. In this letter, it was stated that the duty liability would restart from 1.10.98.

5. In a similar situation, in Jupiter Industries case in which the machine was dismantled, the Tribunal has held as under: "Compounded levy is a special procedure for payment of Central Excise duty where under a manufacturer discharges the duty payable on the excisable goods manufactured by him by making payment of amounts fixed per machine under the relevant Central Excise Rules.

The rates per machine are fixed under Notifications issued in terms of Rule 96-ZH having regard to the average production per machine.

Sub-rule (2) of that Rule laid down the method of calculation of sum payable. These Rules, in no way stipulate that any sum at the compounded rate is payable towards duty for a machine which is not in existence with the manufacturer. Nor do they say that no refund claim can be made with regard to excess payment made. Central Excise refund claims are made in terms of Section 11B of the Central Excise Act. That section laid down that any person claiming refund of any duty of excise may make an application for refund of such duty to the Asstt. Collector and that, if the Asstt. Collector is satisfied that all or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly. It is clear from Rule 96ZA that pattas/patties manufacturers can opt for the special procedure. Rule ZB stipulates that duty liability can be discharged by payment of certain sum. Sub-rule (2) of Rule 96ZB deals with calculation. None of these Rules contemplates payment of duty after a machine has been dismantled and production of the machine discontinued. There is no bar also contained in the Special Procedure Rules or in Section 11B prohibiting refund of excess duty paid by an assessee working under the Special Procedure Rules. In the present case, there is no dispute that the machine was dismantled on 29.5.1998. Despite that,

duty was ordered to be paid in respect of the dismantled machine for three months i.e. June 98 to August 98. This payment was clearly in excess of the sum payable under Compounded Levy Scheme. That amount is refundable in terms of Section 11B of the Central Excise Act. The Lower Authorities were in error in holding that the refund was not permissible in terms of Rules relating to Special Levy. Therefore, the orders denying the refund are required to be set aside. I do so. The appeal succeeds and is allowed with consequential relief to the appellants. The amount collected in excess shall be refunded to the appellant forthwith." 6. In view of the above decision of the Tribunal the impugned order is set aside the appeal is allowed.

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