

Cce Vs. Blue Blends India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-08-2003

Reported in : (2003)(88)ECC586

Judge : Author: K Usha

Appellant : Cce

Respondent : Blue Blends India Ltd.

Judgement :

1. When this application for stay No. E/S/2178/02 NB (A) in Appeal No.E/2814/02 NB (A) filed by the Revenue challenging the order passed by the Commissioner (Appeals) dated 14.3.2002 came up for hearing it was felt that the above appeal itself can be disposed of alongwith E/1123/02-NB (A) filed by the assessee against the same order. We, therefore, proceed to dispose of the appeal itself. The assessee is engaged in processing/manufacturing Cotton Denim Fabrics falling under Chapter No. 52 the Schedule to the Central Excise Tariff Act, 1985.

They were availing benefit of deemed Modvat Credit under Rule 57A of Central Excise Rules read with Notification No. 29/96-CE (NT) dated 3.9.96. On 21.9.97 the Central Excise Preventive Staff placed under seizure 2,31,105 mtrs. of cotton denim fabrics valued at Rs. 1,72,14,125 which were found unaccounted and lying in fully finished condition in the premises of the assessee. The seizure was made under a reasonable belief that the same were liable for confiscation under the provisions of the Central Excise Act, 1944. The said fabrics were released

provisionally to the assessee on execution of B-II bond with security with a direction that the assessee shall not avail deemed Modvat Credit on clearance of the said provisionally released fabrics in accordance with Notification No. 29/96-CE (NT) dated 3.9.1996. Later on scrutiny of the RT-12 returns filed by the assessee, it was observed that they had cleared the fabrics in question after availing the benefit of the deemed credit. A show cause notice was issued denying the benefit of deemed credit by applying proviso to Notification No.29/96-CE(NT) dated 3.9.1996. The adjudicating authority confirmed the demand and imposed a penalty to the extent of Rs. 1 Lakh. Aggrieved by the above, the assessee filed an appeal.

2. The Commissioner (Appeals) after referring to the relevant provision in the Notification No. 29/96 dated 3.9.96 took the view that even if the goods were found kept unaccounted in fully finished condition, the provisions contained in proviso to Notification No. 29/96 for denying deemed credit will not be applicable. On the basis of the presumption that the assessee would have cleared the goods without payment of duty no action could have been taken by applying the proviso to the notification. On the above basis the Commissioner (Appeals) reversed the finding regarding demand of duty. But he confirmed the imposition of penalty on the ground that the assessee had availed of credit in contravention of the terms and condition of the provisional order.

Aggrieved by the first part of the order Revenue has filed an appeal referred above. The assessee's Appeal is directed against the upholding of imposition of penalty.

The relevant provisions in the Notification No. 29/96-CE (NT) dated 3.9.1996 reads as follows: "7. The provisions of this notification shall not apply to final products on which duty of excise leviable under the (Central Excise Act, 1944) or as the case may be, the additional duty leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, has not been levied or paid or has been short-levied or short paid or erroneously refunded by reason of fraud (sic) [fraud], collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the said Central Excise Act or of the rules

made thereunder with intent to evade payment of duty." 4. A reading of the above provisions would clearly show that the benefit of Notification can be denied only in case where duty has not been levied or paid or has been short levied on the final products. In the facts of the present case so long as final products had not been removed, it cannot be contented that duty has not been levied or paid or has been short levied or short paid. According to us the Commissioner (Appeals) is fully justified in holding that on the basis of presumption that the assessee would have removed goods without payment of duty the benefit of the Notification cannot be denied. We, therefore, find no merit in the appeal filed by the Revenue.

5. As far as the appeal filed by the assessee is concerned as mentioned earlier it is against the imposition of penalty. It is contended on behalf of the appellant that since the prohibition contained in the paragraph 7 of the Notification No. 29/96 are not attracted in the facts of the case of the appellant, there was no legal restriction on the assessee taking deemed credit. Under these circumstances the Commissioner (Appeals) should not have affirmed the imposition of penalty.

6. We find merit in the above contention raised by the appellant. The reasons given by the Commissioner (Appeals) for sustaining the penalty are not sufficient for imposition of penalty under Rule 173 Q. It is also relevant to note that once it is found that benefit of Notification No. 29/96 cannot be denied to the appellant then no penalty should be attracted for appellant taking deemed credit. For the above reason, we set aside that part of the order of the Commissioner (Appeals) confirming the imposition of penalty and allow the appeal filed by the assessee.

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