

Sun Export Pvt. Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-11-2003

Judge : J Balasundaram

Appellant : Sun Export Pvt. Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The appellants herein claimed refund of CVD paid on import of Petroleum Jelly sold on high sea sales basis to M/s Richardson Hindustan Limited, on 7.2.1984 and the claim was rejected by the adjudicating authority vide his order dt. 27.5.1985. The Commissioner (Appeals) upheld the adjudication order; his order were set aside by the Tribunal, which extended the benefit of Notification No. 234/82 and directed the claimant to produce triplicate bill of entry before the authorities below. The claimants moved the Hon'ble Bombay High Court for non implementation of the Tribunal's order and High Court remanded the case with the direction that the authorities should examine the reason for non-availability of the Triplicate copy of the Bill of Entry and should examine the applicability of the bar of unjust enrichment.

The refund claim was once again rejected vide order dt. 16.12.1992 on the ground of both non-production of original triplicate bill of entry and unjust enrichment. The claimants filed writ petition No. 840/93 in the Bombay High Court which remanded the case to examine whether the filing of triplicate bill of entry could be considered by the Assistant Commissioner. The claim was once again rejected by the

Assistant Commissioner of Customs vide his order dt. 4.3.1996; the Commissioner (Appeals) upheld the rejection; hence this appeal before the Tribunal.

2. I have heard Shri Naresh Thacker and Shri S.V. Parekar Ld. DR. The filing of the OTBE is required for ascertaining [a] The cash number under which duty was paid, for the purpose of co-relation with official record.

[b] That the refund claim has not been already received against the same cash number.

The authorities below have held that production of OTBE is mandatory because it is not possible to trace out departmental records in the absence of the above details. However, all the details above mentioned are contained in the duplicate and quadruplicate copies of the bill of entry. Further, the appellants were willing to execute the Indemnity Bond to safeguard the interest of Revenue, in the event of claim having already been sanctioned to somebody else. The High Court had directed the Customs authorities to examine the reason for non-availability of the OTBE. The OTBE is stated to be not available with the appellants as the goods were sold to M/s. Richardson Hindustan Ltd. on high sea sale basis. The authorities below have not examined this aspect under the High Court directions. Since the particulars required are available on the duplicate and quadruplicate copies of the bills of entry and the appellants are also willing to execute indemnity bond to safeguard Revenue interest, I hold that the non-filing of the OTBE cannot be a ground for rejection of refund claim. However, the other ground on which the claim has been rejected namely that it is only M/s.

Richardson Hindustan Ltd. who paid duty in pursuance of an order of assessment can claim refund after satisfying the Customs authorities that the duty burden has not been passed on is sustainable, in the face of the language of Section 27 of the Customs Act, as it stood at the relevant time. The Section as it stood in 1983-84 when goods were imported and refund claim filed respectively, provided that only a person who had paid duty in pursuance of an order of assessment may make an application for refund of such duty. I therefore, uphold the impugned order and reject the appeal.