

Sheen Petrochemicals Vs. Commissioner of Cen. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-21-2003

Reported in : (2004)(166)ELT332Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Sheen Petrochemicals

Respondent : Commissioner of Cen. Excise

Judgement :

1. The Commissioner of Central Excise, Mumbai has confirmed a duty demand of Rs. 1,28,035.43 with interest under Section 11AB and imposed a penalty of equal amount under Section 11 AC against the appellants on the ground that they were not entitled to the benefit of Notification No. 287/86-CE dated 5/5/1986, claimed by them for 'Speciality Oil' manufactured by compounding mineral oil with other substances, for the reason that the mineral oil was not duty paid as required in terms of the proviso to Notification and the extended period of limitation has been made applicable.

2. We have heard both sides. The appellants' claim that since duty paid High Flash High Speed Diesel Oil (HFHSD) received by them but not used for the manufacture of Speciality Oil by conversion into mineral oil by distillation process, the mineral oil is to be treated as duty paid, thus Satisfying condition of the proviso to Notification, cannot be acceded to as the requirement of the Notification is that mineral oil should be duty paid. We, therefore, hold that the benefit of

concessional rate under the Notification is not available to the appellants, The moment that the demand is barred by limitation also cannot be accepted for the reason that the classification list filed during the period in dispute viz. 1.4.89 to 31.3.93 (the show cause notice is dated 3.5.94) which stated that the speciality oil was manufactured out of duty paid mineral oil was clear mis-statement, in the absence of any bonafide belief that the mineral oil was not required to be duty paid and that it was sufficient if the starting material viz. HFHSDO was duty paid. The records maintained by the assessee for the period in dispute would only show what was manufactured and cleared by them, but would not bring out whether duty was paid thereon or not. We, therefore, hold that the proviso to Section 11A(1) of the Central Excise Act has been correctly invoked.

3. We, therefore, confirm the duty demand; however, we set aside the levy of interest and imposition of penalty for the reason that the provisions under which interest has been levied and penalty imposed viz. Section 11AB and Section 11AC of the Central Excise Act, did not exist in the statute book at the time of the offence.

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