

United Phosphorus Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-12-2003

Reported in : (2004)(92)ECC363

Judge : K Usha, N T C.N.B.

Appellant : United Phosphorus Ltd.

Respondent : Cce

Judgement :

1. The appellant is a manufacturer of pesticides. For use in that, they import Phosphorus as input. The additional duty of customs (countervailing duty) levied on the input is available as Modvat credit to the appellant. From the imported Modvated phosphorus, the appellant sold some quantity between October 1996 to May 1997. While making those sales, the appellant paid Central Excise Duty on the phosphorus, instead of reversing the Modvat credit taken. Subsequently, on 4.8.98, pursuant to a direction by the jurisdiction Superintendent, the appellant reversed the credit taken in respect of the should phosphorus (Rs. 20,31,048). Thus, in respect of the same goods, payment of central excise duty as well as reversal of credit took place. The appellants letter dated 4th August 1998 on the subject to the Superintendent mentioned that the reversal of credit was under protest. The authorities took no action to restore the credit. Thereupon the appellant filed a refund application on 11.8.2000 claiming refund of the additional amount paid. This claim has been rejected under the impugned orders on the ground that the claim was time barred.

2. It is the appellant's contention that the rejection of the refund application was illegal and unjust inasmuch as law does not warrant payment of duty as well as reversal of credit in respect of the same goods. It is also pointed out that time barred provision did not apply, since the reversal of credit was done under protest. The appellants have also relied on the decisions of the High Court of Gujarat at Ahmedabad in the case of Shree Ram Food Industries v. Union of India [2003 (152) ELT 285 (Guj).] and Parle International Ltd. v. Union of India [2001 (127) ELT 329 (Guj.)] in support of the submission that the reversal of credit made by the appellant at the direction of the Superintendent could only be treated as a deposit outside the scope of time limit under Section 11B of the Central Excise Act for the purpose of claiming refund. The appellants have also referred to the decision of the Apex Court in the case of Collector of Central Excise, Jaipur v. Raghuvar India Ltd., 2000 (70) ECC 1 (SC) in support of the submission that time limit as stipulated under Section 11A did not apply to recovery of Modvat amounts. It is the learned Counsel's submission that it follows from this decision that entries in Modvat account are not covered by the time limits for recovery and refund.

3. We have perused the records and have considered the submissions made by both sides. There is no dispute in the present case that in respect of the same inputs cleared by the appellant duty, payment as well as reversal of credit have taken place. There was no requirement to make both. The appellant's letter dated 4th August, 1998 clearly states that the reversal is made under protest. To such a case, time bar cannot apply since it is well settled that time limit does not apply to payments made under protest. The impugned orders are, therefore, erroneous in holding that the refund claim was liable to be rejected on the ground of time bar.

4. In view of what is stated above, the impugned orders are set aside and the appeal is allowed. The appellant may take back into its Modvat account Rs. 20,31,048, the amount which it had reversed earlier.