Uni Deritend Ltd. Vs. the Commissioner of Central

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-12-2003

Reported in : (2004)(166)ELT252Tri(Mum.)bai

Judge : S T S.S.

Appellant : Uni Deritend Ltd.

Respondent : The Commissioner of Central

Judgement :

1. Appellants had filed refund claim pertaining to the period 01/03/88 to 22/06/88 of differential duty paid against an order of Assistant Commissioner dated 16/08/88. The appeal filed by the assessee against the order dated 16/08/88 of Assistant Commissioner was rejected by the Commissioner (Appeals). The matter rested there since the assessee did not file any appeal against this order of rejection by the Commissioner (Appeals). The lower authority rejected the claim on the basis of time bar and that appellants had not filed any appeal against the order of the Commissioner (Appeals) the protest duty paid under Rule 233B of Central Excise Rules was meaningless.

"I have carefully gone through the case records. The issue involved in the present appeal is whether the OIO No. 23/BHD/90/Refund/1054 dated 04/04/90 passed by the lower authority rejecting the refund claim of Rs. 1,22,552/- on the grounds that (i) the assessee have failed to comply with the provisions of Sub-rule (6) of Rule 233/3 of CER 1944, inasmuch as they did not take recourse to appellate provisions without which mere mention of protest is meaningless; (ii) Appellants protest is void ab initio as they have also not complied with the provisions of Rule 233B of CER 1944, as such, the refund claim is hit by the limitation of time bar; and (iii) the refund claim is not accompanied by GP1s, PLA, RG 23A Part II, is legally proper, correct and sustainable. From the case records, it is seen that the part amount of Rs. 1,22,552/- now claimed as refund by the appellants was paid by them as per OIO F.No. V(73)3/79/87/CVC/4169 dated 11/08/1988 approving the CL No. 1/88 w.e.f. 01/03/1988 on payment of 20% BED and 5% SED on BED. The appeal filed by the appellants against the OIO dated 11/08/1988 with the Collector (Appeals), Indore, has been rejected vide OIA F.No. V-2(Ch. 73) 3133/88 dated 22/02/1991 and in the absence of further appeal by the appellants, the said OIA dated 22/02/1991 has attained its finality and in the absence of further appeal, the effect of payment of duty "under protest" was not available to the appellants on 20/10/95 when they filed the refund claim with the A.C. Furthermore, while claiming the refund claim, as per the provisions of Section 11B appellants are required to submit all the co-relating duty paying documents viz., GP1, PL A, RG 23A Part II etc. and prove that they have neither passed on the benefit of Modvat credit nor recovered such amount of duty element from their buyers. As appellants have neither filed further appeal against OIA dated 22/02/91, not obtained a favourable order, nor established their claim as required under Section 11B of CEA 1944, the OIO No. 33/BHD/96/Refund/1054 dated 04/04/96 passed by the A.C.C.Ex.

Bhandara Division, rejecting the refund claim of Rs. 1,22,552/- appears to be legally proper, correct and sustainable.

Therefore, taking into consideration of all the above facts, I do not find any valid grounds to interfere in the OIO No. 33BHD/96/Refund/1054 dated 04/04/1996 passed by the A.C.C.Ex.

Bhandara Division." a) The plea of the appellant that refund claim is a remedy for correcting an assessment and can be utilized in this case of duty paid under protest cannot be upheld since there is admittedly no appeal was filed against the approval of the classification at higher rates of duty, the matter resting with the order of the Commissioner (Appeals) not being in favour of the appellants. In coming to this decision, one is bound by the law as laid down by the Supreme Court in the case of Flock India (200 (120) ELT 285 SC).

b) The reliance of the appellants on para 70 of the case of decision of Supreme Court in Mafatlal Industries Ltd., (1997 (89) ELT 247 SC) will not help the case as even if the refund is held to be not barred by limitation, the refund is not eligible ab-initio in view of non-challenge of the order of classification.

4. In view of the findings, this appeal against the rejection of refund is required to be dismissed for reason as arrived at.