Commissioner of Central Excise Vs. Weizmann Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-09-2004

Reported in : (2004)(170)ELT25Tri(Mum.)bai

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Weizmann Ltd.

Judgement :

1. This is revenue's appeal against the order-in-appeal passed by the learned Commissioner (Appeals). The refund claim of the respondents was rejected by the adjudicating authority. On appeal the same was allowed by the learned Commissioner (Appeals). Hence the present appeal by the revenue.

The respondents exported certain consignments of fabrics under the D.E.P.B. Scheme. On completion of exports, they filed refund claim with the jurisdictional Central Excise Deputy Commissioner, in terms of procedure contained in Rule 57 F (13) of the Central Excise Rules 1944, read with Notification No. 85/87- CE dated 1/3/87.

(1) The respondents have taken deemed credit, both in the deemed credit register as well as in the RG 23 A and as a result it has not been possible to ascertain accurately whether the deemed credit accumulated with respect of the relevant AR 4s had been utilised by the respondents or not.

(2) T.N. No. 84/98 dated 16/9/98, stipulates requirements for columns for opening balance and closing balance of credit availed and utilised. TN also clarified that the transferring accumulated credit to RG 23 Part II was incorrect, since RG 23 A Part II is meant only for taking credit of actual credit and not deemed credit.

(3) Although the proof of export duly accepted by the Superintendent of Central Excise (Bond) in original has been produced, the certified copies of relevant shipping bill has not been produced so as to ascertain whether the drawback has been claimed.

"Notwithstanding any other provisions of Rule 57F(13) of CER 1944 and notification No. 85/87 dated 1.3.87 readwith notification No. 29/96 dated 3.9.96 the present refund claim is inadmissible on the grounds discussed hereinabove." 5. On acceptance of the appeal from the respondents by the Commissioner (Appeals), the revenue have filed the instant appeal more or less retreating the same grounds.

6. As can be seen from the facts enumerated above the Deputy Commissioner himself has recorded the reasons which are not specified in the Rule 57F (13) in terms of which the refund was claimed. It is obvious that none of the grounds at Serial No. (1) to (3) mentioned in pass as the above are part of the statutory provisions prescribed in Rule 57F (13) of the Central Excise Rules 1944. There is not even a whispher as to which provisions of the Rule 57F (13) is violated. In fact from the portion of the order extracted in Para 4 above, there is an indirect admission, that all the conditions contained in Rule 57F (13) are fulfilled. Hence the rejection of the claim was correctly held by the learned Commissioner (Appeals) as not sustainable.

7. Nevertheless, I would like to deal with the issues relating to deemed credit register and shipping bills. So far deemed credit register is concerned, the controversy regarding opening and closing balance is unwarranted. The deemed credit on fabrics accrues only at the point of clearance of the fabrics from the factory unlike the credit in other schemes, where credit is taken at the point of receipt of inputs in the factory. The separate register for deemed credit is only to facilitate scrutiny of correctness of deemed credit taken through a separate record.

The ease of scrutiny will be lost, if the credit entries are mixed with entries of credit of other inputs. It is also noted that this register is also not being used for making any debit entries for duty payment (for home consumption) or for claiming refund (against export). Since the respondents are predominantly doing export, for the ease of quantification of export benefit, the credit accrued in the deemed credit register is transferred to RG 23 A Part II. I cannot see anything in the rule which prohibits this. In fact, deemed credit available on some inputs (like metals) was always taken in RG 23 A Part II. The trade notice cannot restrain the transfer of credit. Hence I see no merit in the revenue's objection on this point.

8. Coming next to the objection that though the S/B copies have been produced, showing export under DEPB, there is a failure to show the certified copies of the S/B, duly certified by the Customs Authorities, so that the sanctioning authority can satisfy himself that no drawback was claimed against the shipments, though S/Bs show prominantly the export under DEPB S/Bs. The propriety of this objection is also beyond comprehension. In case the shipments were indeed under DEPB cum drawback, the Custom Authorities are bound to make a suitable endorsement on the S/Bs before giving the let export order. If the apprehension is that the changeover to drawback S/Bs is made after shipment, the Customs Authorities would not be dumb enough to permit such a change without checking from the excise authorities about the export benefits obtained from the excise. In any case, instead of harbouring such a misconceived apprehension, the correct approach for the adjudicating authority was to cross check this aspect with the Customs Authorities at the port concerned, rather than asking the respondents to obtain certified copies of S/Bs. It is not possible as to which Department of Customs Administration is required to give a certificate and what it should contain. While the Deputy Commissioner has disposed off the refund matter in above fashion, the Commissioner could have avoided filing the instant appeal on the basis of grounds which do not exist in the Rule 57 F (13), as held by the Deputy Commissioner himself.

9. In view of these discussions, I do not find any merits in the revenue appeal and hence the same is rejected and the impugned order-in-appeal is sustained.