

Seam Engineers Vs. the Commissioner of Central

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-25-2004

Reported in : (2004)(167)ELT294Tri(Mum.)bai

Judge : M T K.D.

Appellant : Seam Engineers

Respondent : The Commissioner of Central

Judgement :

1. The brief facts of the case are as under. The appellants were served with a show cause notice consequent to visit to their unit by preventive party saying that the appellants have sent certain inputs outside the factory for processing under Rule 57F (4) and did not bring them back within the stipulated period of sixty days and therefore the credit is required to be recovered. Secondly, they have received rejected duty paid goods under Rule 173H and that, these goods were not available for physical verifications by preventive party. Therefore it was stated that, the goods have been replaced and duty is required to be recovered. Though as per the directions of the preventive party, the duty has been paid voluntarily, (SIC) the matter has been contested.

The appeal against the order in original passed by the Additional Commissioner has been rejected by the Commissioner (Appeal). Hence this appeal to the Tribunal.

3. On going through the records, it is noticed that, in their reply to the show cause notice, the appellants have said that, so far as the nonreturn of the inputs from on the job workers concerned, they had enclosed the requisite challans (F4 challans) issued under Rule 57F(4), having endorsements of receipt and copies of relevant RG 23 Pt-II extracts about the re-entry and re-credit were also enclosed. However, on going through the order-in-original it is seen that the Additional Commissioner had failed to take note of the enclosed challans though there is a reference to the reply filed by the appellants on 22/09/2000. On going through the copies, of the F4 challans, it is obvious that, the receipts of the goods from the respective job workers, were within the stipulated time limit and hence there was no case for claiming that, the appellants were required to make the payments of duty as demanded in the impugned order. Therefore, I hold that this part of the order of the lower authorities is required to be set aside.

4. So far as the other allegation, relating to the non availability of goods which are returned under Rule 173H is concerned, the requirement of payment of duty on the goods which are not traceable in the factory is somewhat perplexing. It is not, as if the appellant had taken any benefit of receipt of the duty paid goods in the factory. The appellants though claimed that, the material was somewhere in the processing, it is immaterial whether this is available in the processing unit and was not visible to the preventive party during their visit or otherwise. In order to fasten the duty liability on the manufacturer, the department is required to fully establish the liability by bringing on record the positive facts of clearance of non duty paid goods from the factory. It is paradoxical that once the returned goods are accepted to have been received after payment of duty initially at the point of first clearance, the duty is being demanded on the ground that the said goods are missing. Even if these goods are missing so what Since no duty is payable on such goods, even if the exact removal is not pin pointed there can be no consequences on the revenue. Therefore, unless the department is in a position to establish that the appellants have claimed the benefit of duty free clearance in the guise of re-issue of duty paid goods, there cannot be any duty liability.

5. Accordingly, I find that, the appeal on this ground also succeeds.

Therefore, I have no hesitation in setting aside the impugned orders passed by the lower authorities. Consequently the appeal is allowed with consequential relief, if any, in accordance with the law

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