

Commissioner of Central Excise Vs. Exon Laboratories Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-03-2004

Reported in : (2004)(175)ELT163Tri(Mum.)bai

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Exon Laboratories Ltd.

Judgement :

1. The revenue's instant appeal is directed against the impugned order-in-appeal passed by the Commissioner (Appeals). The Commissioner (A) accepted the respondent's appeal claiming refund of duty paid on the defective goods, which were brought back to the factory and cleared again on payment of duty. Though the receipt of the said goods was declared by the respondents under Rule 173H of the Central Excise Rules 1944, the respondents could not complete the reprocessing even within the extended time limit permitted by the Asstt. Commissioner. On their failure to obtain further extension, the respondents ended up paying duty on the reprocessed material again. These facts are not in dispute.

3. On going through the facts of the case, it is noted that the adjudication order rejects the claim citing :- (i) The duty was correctly payable in terms of provisions contained in Rule 173H, since the returned goods were retained in the respondent's factory beyond the retention period of 6 months.

(ii) The correct procedure under Rule 173L was not followed, in case the claim was to be justified under that rule.

(iv) No evidence is produced to show that the incidence of duty has not been passed on, The evidence produced is not sufficient to establish that they have not recovered duty from their customers.

(v) The customers returned the goods only after debiting 95% of the duty on the returned quantity. Hence receipt of duty paid goods was without proper payment of duty.

4. The Commissioner (A) set aside the order. Revenue's appeal more or less reiterates the grounds adopted in the order of the Asstt.

Commissioner to seek the restoration of the order-in-original.

5. On going through the revenue's appeal, I note that, the same is without any merits. The return of duty paid goods from the customer, after reversal of 95% of the duty paid on the quantity under return is not disputed. In terms of the Modvat rules operating at that point of time, since the user could take credit only to the extent of 95% of the duty paid, the credit reversal by the customer was complete. It is not the case of the Department that the credit of this 95% duty was taken by the respondents, at the point of return of the rejected material. It is the objection of the Department, that the reprocessing carried out was not a process of manufacture. Even the manufacturers (Respondents) did not claim so. Going by the Department's own contention, since the reprocessing did not amount to manufacture, the said goods need not have paid duty at the point of subsequent clearance. Since the duty was paid on such subsequent clearance, though not required, it was the second payment that was required to be refunded. It is nobody's case that the claim is time barred with reference to the payment made on the reprocessed goods.

6. So far the objection regarding unjust enrichment is concerned, I note that, the question of unjust enrichment could arise only in the event, the manufacturers were to pass on the duty burden of both the payments to their respective

customers. It is brought on record that, the burden of duty payment made on the first occasion has been removed, when the customer reversed the credit of the said amount shown in the invoice accompanying the returned goods. Therefore, though the sale invoice for the second customer reflects the payment of duty and is added to the final cost, it can not be said that the respondents have unduly enriched themselves by collecting this amount from the second customer, because the duty paid by them for clearances made to the first customer has been absorbed by them, in as much, as they did not take credit of duty reflected in the invoice accompanying the returned goods. Therefore, I hold that the mischief of unjust enrichment will not get attracted in this case.

7. Accordingly, I note that there is no merit in revenue's appeal. The same is hereby rejected.

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