Audichem (i) Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-19-2004

Reported in : (2004)(176)ELT643Tri(Mum.)bai

Judge : A Wadhwa

Appellant : Audichem (i) Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. After hearing Shri Hardik Moth, learned Advocate and Shri A.K.Saxena, learned J.D.R. I find that the issue involved in the present appeals is refund claim of Rs. 1,15,403/-. As per the appellants, the said refund claim is of the duty paid on the inputs which have been used by them in the manufacture of the export goods, cleared on bond and the refund claim is in terms of provision of Rule 57A (13).

However, the same was inadvertently filed by them under the provision of Rule 173L. they were issued a Show Cause Notice dtd. 11.11.1996 proposing to reject the refund claim on the ground that Rule 173L is not applicable. However, notice also took into consideration the provision of Rule 173H and sought to deny the refund claim on the ground that no manufacture has taken place in the appellant's factory and as such Rule 173H is also not applicable. The claim was also sought to be denied on the ground of unjust enrichment. The said Show Cause Notice was adjudicated by the Assistant Commissioner where he observed that - "The refund claim is admissible on merits but in the light of unjust enrichment, the said party to eligible for the refund claims because they could not prove that the incidence of duty has not been passed on to the buyers as it is or by adding the same in the cost of production of these final product." 2. Accordingly, he rejected the refund claim. On an appeal against the same, the Commissioner (Appeals) observed that the appellants had filed the refund claim under Rule 173L which is not applicable and Rule 173H would also not be applicable as the appellants have not carried out any activity which is the manufacturing activity in their unit. The said order of the commissioner (Appeals) is impugned before me.

3. I find that the entire issue has been examined by the Lower Authorities under the Provision of rule 173L and 173H, which are not applicable in the instant case. The refund claim arises in terms of Provisions of Rule 57F (13) which allow manufacturer of final product to avail the benefit of credit of duty paid on the inputs used in the manufacture of such final product which are cleared for export under bond and allow them to utilise such credit towards payment of duty on the final product cleared for home consumption and if such adjustment is not possible, the assessee would be allowed refund of such amount.

As such they appellants would be entitled to the refund, if they can established that it was not possible for them to utilise the credit for payment of duty in respect of clearances made for home consumption. The appellants have strongly contended that filing of refund claim under the wrong rule does not take away their substantive benefit otherwise available to them. In any case Assistant Commissioner having held that refund is admissible on merits and the unjust enrichment provision not being applicable to the refund arising under Rule 57F (13) the Commissioner (Appeals) was not justifying in rejecting the refund claim on the same ground for which the Show Cause Notice was issued and for which there was a difference finding by the Original Adjudicating Authority.

4. Shri Saxena, appearing for the revenue strongly objects to the same application being considered as having been filed under Rule 57F (13) and submit that the assessee should have filed the application under that rule. He further submits that now if the assessee is allowed to stake their claim under the said rule, they should be directed to file a fresh application, which in any case would be barred by

limitation.

5. I do not find much merit in the above contention of the learned JDR.The application having been filed by the appellant well within the period and in respect of the refund of the credit of duty paid on he inputs the wring quoting of the rule, by itself will not be sufficient to deny the benefit, otherwise available to the appellants. However, it need to be examined as to whether the provisions of Rule 57F(13) stood complied with for which purpose I set aside the impugned order and remand the matter to the original adjudicating authority for doing the needful and pass a fresh order in the light of observation made above.