Commissioner of Central Excise Vs. Bhushan Processors Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-09-2004

Reported in : (2004)(177)ELT285Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Bhushan Processors Pvt. Ltd.

Judgement :
1. Heard both sides. The issue involved in this appeal is Application of notification No. 29/96 CE(NT) dated 3.9.96 as amended and also as provided in notification No. 85/87 CE dated 1.3.87 as amended from time to time.

2. The appellants are M/s. Bhushan Processors Pvt. Ltd. engaged in the manufacture of cotton fabrics and man made fabrics falling under Chapter 52, 54 and 55 of the Schedule to the Central Excise Tariff Act, 1985 and have filed three refund claims under Rule 57(F) of the Central Excise Rules, 1944.

3. The Asst. Commissioner of Central Excise, Division V, Ahmedabad, rejected the refund claims on the appellant. On filing appeal, the Commissioner (Appeals), observed that merely writing on the AR-4 or invoices "deemed credit not availed" under a bonafide impression could not have been ground for rejection of the said credit, particularly when there is no dispute eligibility of the said credit.

4. It is further observed with regard to non-fulfillment of condition No. 2 of the notification No. 85/87 (NT), that it is only a procedural requirement. It is also observed that the appellants have established that they were unable to utilize the said deemed credit and satisfy the impugned order to that effect.

5. In respect of refund of Rs. 8,26,618/-, he has upheld the Order-in-Original on the ground of time bar. Hence this appeal by the Asst. Commissioner of Central Excise, Ahmedabad.

6. We have gone through the records carefully and considered the submissions made by both sides. The original adjudicating authority erred in not applying the provisions of notification No. 29/96 (NT) dated 3.9.96 to the facts and circumstances of this case. Therefore, it is felt expedient to remand the matter to the original adjudicating authority for application of notification No. 29/96 (NT) as claimed by the Respondent and dispose of the matter afresh.

7. In the result, the appeal is allowed in remand as per the above terms.