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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-19-2004

Reported in : (2005)(99)ECC85

Judge : M T K.C.

Appellant : Lime Chemicals Ltd.

Respondent : Cce

Judgement :

1. Heard both the sides. In the appeal, the appellants have challenged the denial of refund of Rs. 79,478.96 (Rs. 36,102.96 + Rs. 43,376). The Commissioner(Appeals) rejected the refund claim on the ground that the appellants have failed to produce any evidence documentary or otherwise to prove that reversal of credit was under protest in terms of Rule 233 B of erstwhile Central Excise Rules, 1944, Shri P.R. Mallick, Ld. C.A.appearing for the appellants pleaded that from the letters placed at pages 42 and 44 of the paper book, it is clear that protest was lodged as the Asstt. Commissioner of Central Excise has written to the appellants (at that time, they were known M/s. Thirani Chemicals Ltd.); that proper procedure for lodging the protest against the said decision of the jurisdictional RO has not been followed in terms of Rule 233B (5) of Central Excise Rules, 1944, which clearly speaks that a protest is to be lodged before payment of duty. Thus from these letters, it is clear that in one case the appellants have debited the duty on 17.1.96, and the protest letter was lodged on 14.2.96. In other case, the duty was debited on 30.5.95 and protest was lodged on 6.6.95. These

papers are on record, therefore, the finding of the Commissioner that no documents were produced before him is contrary to the facts. He relied on the decision of the Tribunal in the case of Ritspin Synthetics Ltd. v. CCE, Indore, 2001 (132) ELT 664 (Tribunal-Delhi), wherein it was held that for claiming refund of duty paid under protest in respect of Modvat credit disallowed, one has to follow the procedures outlined under Rule 233B of the Central Excise Rules, 1944 and a detailed representation to be made within 3 months. He has also relied on the decision of the Supreme Court in the case of Pure Drinks v. CCE, New Delhi, 1997 (94) ELT A-237 and the decision of the Bombay High Court in the case of Roche Products Ltd. v. Union of India, 1991 (51) ELT 238 (Bombay), wherein it was held that the letter written to the Asstt.

Commissioner intimating that duty is paid under protest is sufficient compliance with the requirement of Rule 233-B of the Central Excise Rules, 1944. He pleaded that the only issue in this appeal is whether the protest filed by them within 15 days of the debiting the duty amount should be taken as a proper protest under Rule 233 B or not. He said that since the Tribunal has already decided the issue in case of Ritspin Synthetics Ltd. (supra) holding that for claiming refund of duty paid under pro test in respect of Modvat Credit disallowed, one has to follow the procedures outlined under Rule 233B of Central Excise Rules, 1944 and a detailed representation to be made within 3 months, then it will be taken as a compliance of the procedure under Rule 233B of the Central Excise Rules.

2. Shri S. Bhatnagar, Ld. JDR appearing for the Revenue pleaded that the Commissioner (Appeals) has given a clear finding that no documents were produced before him. He also relied on the Supreme Court's decision in the case of CCE v. Doaba Cooperative Sugar Mills, 1988 (18) ECC 157 (SC): 1988 (37) ELT 478 (SC), wherein it was held that an assessee is bound within four corners of the statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to. He also relied on the decision of the Supreme Court in the case of Miles India Limited v. Asstt. Collector of Customs, 1987 (30) ELT 641 (SC), wherein it was held that the Appellate Tribunal as well as Customs Authorities are bound by statutory period of limitation. He pleaded that in view of the clear cut finding of the Commissioner (Appeals), the

appeal deserves rejection. He has also referred to the Supreme Court's decision in case of Priya Blue Industries Ltd. v. CC (Preventive), 2004 (96) ECC 217 (SC) : 2004 (172) ELT 145 (SC), wherein it was held that refund claim contrary to assessment order is not maintainable without order of assessment having been modified in appeal or reviewed under Section 28 of Customs Act, 1962.

3. Having considered the submission made by both the sides, I find that in this case, the appellants have taken Modvat credit on certain documents which were disputed by the Range Superintendent and he directed the appellants to reverse the credit on those documents. The appellants reversed the credit and subsequently filed a protest letter for each of the refund claims. I find that appellants were informed that protest is required to be filed before payment of duty under Rule 233B (5) hence payment is not treatable under protest. However, on merits of representation no decision was taken on the protest letter filed by them. When the show cause notice was issued then it was pointed out that lower authority has rejected the refund claim on the ground that the refund was filed after expiry of six months period from the date of debit of the duty amount. I find that once the appellants have filed a protest letter with detail reason of protest, then decision was required to be taken on such representation instead of applying six months period under Section 11B of the Central Excise Act for examining the refund claims. In view of this, the order of Commissioner (Appeals) is set aside. The adjudicating authority should examine the protest letters submitted by the appellants and take a decision thereon and thereafter on the basis of such decision examine the refund claims and take a decision thereon. The decision should be taken by the adjudicating authority within a period of 4 months from the date of receipt of this order. The appeal is disposed of in the above terms.

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