

Commissioner of Central Excise Vs. Modern Polyplex (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-09-2004

Reported in : (2005)(180)ELT193TriDel

Judge : A T V.K., P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Modern Polyplex (P) Ltd.

Judgement :

1. In this appeal, the Revenue has questioned the validity of the impugned order-in-appeal vide which the Commissioner (Appeals) has set aside the duty and penalty against the respondents which was initially confirmed by the adjudicating authority through order-in-original.

2. The respondents are engaged in the manufacture of PVC compounds and master batch. After the clearance of these goods by them to the customers under the cover of duty paid invoices, they received back some of the goods under Rule 173H during the period July, 1998 to July, 1999 for reprocessing. But they were served with a show cause notice for payment of duty on these goods for having cleared after reprocessing without payment of duty on the ground that in fact, these goods were remanufactured by them after mixing with other goods lying in their factory. The adjudicating authority confirmed the duty demand with penalty through order-in-original as detailed therein. The Commissioner (Appeals) has set aside that order.

3. We have heard both the sides. From the record we find that the goods in question were received by the respondents under Rule 173H, after following the due procedure. The plea taken up by the Revenue is that the reprocessing undertaken on these goods amounted to manufacture in terms of Chapter Note 3 to Chapter 32 of the CETA and as such, they are liable to pay duty again. But in our view, the Commissioner (Appeals) has not rightly accepted this plea. There is no tangible evidence to substantiate this plea of the Revenue. The goods were received back by the respondents under Rule 173H after following the due procedure. The details of the process which amounted to manufacture or akin to manufacture allegedly undertaken by the respondents in respect of those goods, has not been furnished by the Department. Even in the panchnama under which the goods were seized, no such details have been given. The respondents sent due intimation in D-3 form to the Department while receiving the goods back, for reprocessing under Rule 173H and at no stage, the process of reprocessing of the goods was doubted by the department. The statement of Shri Jacob, representative of the respondents, did not help the Department in any manner as he has nowhere categorically admitted that the process undertaken by them on the goods received back under Rule 173H amounted to manufacture or was akin to manufacture for invoking Chapter Note 3 to Chapter 32.

Therefore, the revenue could not legally second time demand duty in respect of those very goods on which duty was paid by the respondents at the time of clearance. The Commissioner (Appeal) has rightly set aside the duty demand and penalty against them. We do not find any illegality in the impugned order and as such, the same is upheld. Consequently, the appeal of the Revenue is dismissed.

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