

Commissioner of Central Excise Vs. Paushak Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-21-2005

Reported in : (2005)(187)ELT249Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Paushak Ltd.

Judgement :

3. The brief facts of the case are that M/s. Paushak Ltd. are engaged in the manufacture of phosgene gas falling under sub-heading No.2912.00, which is being cleared partly on payment of duty outside the factory and partly consumed captively without payment of duty under Notification No. 67/95-C.E., dated 16-3-95 for manufacture of final product viz. Diethyl Carbamyl Chloride (DECC) falling under sub-heading No. 2921.00 of the Central Excise Tariff Act, 1985. The final product, DECC, is cleared in major quantity at Nil rate of duty under Notification No. 67/95-C.E., dated 16-3-95. The input phosgene is exempted from payment of excise duty if used within the factory of production or in relation to manufacture of final product viz. DECC provided the final product DECC is not exempted from whole of the duty of excise leviable thereon or chargeable to Nil rate of duty.

4. Show Cause Notice dated 17-3-99 was issued to the appellants, proposing to recover the duty of excise amounting to Rs. 10,57,610/- for the period from May 1994 to August 1998 on phosgene gas captively consumed in the manufacture of

DECC.5. The Additional Commissioner vide the impugned order has confirmed the duty demand.

6. Aggrieved by the Order-in-Original, the appellants filed an appeal before Commissioner (Appeals), inter alia, contending that the demand is barred by the limitation and also relied upon the decision in the case of Swastic Tin Works v. CCE 7. The Commissioner (Appeals) considering the same held that phosgene gas captively used in the manufacture of final product viz. (DECC) is not chargeable to duty as the said clearances of final product cleared under Notification No. 5/98-C.E., dated 2-6-98 under Chapter X procedure cannot be termed as exempted clearance or assessable to Nil rate of duty. Hence the Revenue is in Appeal.

8. As seen from the impugned Order-in-Appeal, the Commissioner (Appeals) dropped the demand relying on the decisions reported in the case of Indian Aluminium Cables Ltd. v. State of Havana and in the case of Arun Auto Spinning & Manufacturing Co. v. CCE. Supreme Court observed that the general exemption means that the goods should be totally exempted from tax before similar exemption from the levy of Central Sales Tax can become available where the exemption from tax is conferred by conditions or in certain circumstances, there is no exemption from tax generally. In the second decision, the Tribunal has held that non-duty paid goods are those goods, which have clandestinely removed without payment of duty. When the goods are cleared on following the due procedure as prescribed by law, they would not become non-duty paid merely by reason of the fact that they were holding exemption from duty or assessable to Nil rate of duty.

9. In the instant case, it is found that the clearances are as per Chapter X procedure. No duty has been paid on the DECC due to remission provided under Chapter X, then it cannot be a case of exemption or assessable to Nil rate of duty.

10. The findings of the Commissioner (Appeals) that the clearance under Chapter X procedure is remission of duty, which cannot be equated with the exemption from duty is the view that cannot found fault with. The citations relied upon by the Commissioner (Appeals) are relevant to the instant case. Therefore, we find no merits in the Revenue appeal, hence the appeal is dismissed.

