Siddho Mal Paper Conversion Co. Vs. Commr. of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/38812

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-20-2005

Judge : A T V.K.

Appellant : Siddho Mal Paper Conversion Co.

Respondent : Commr. of C. Ex.

Judgement :

1. The common issue involved in these four appeals filed by M/s. Siddho Mal Paper Conversion Co. relates to sanction of refund of duty in respect of duty paid goods received back by them under the provisions of Rule 173L of the Central Excise Rules.

2. Heard Shri P.P. Mittal, learned Advocate, and Shri Bipin Verma, learned D.R. The submissions made by both the learned Advocate and learned D.R. and my findings are as under: 3.1. Learned Advocate mentioned that the Appellants had cleared Lux 100 Gms. wrapper under two invoices No. 495 and 525 for 2093 kgs. & 2150 kgs. respectively to M/s. Vashisti Detergents Ltd.; that out of the said quantity 3265 kgs. of the wrapper was rejected by the customers on account of loose winding and returned the same on 17.7.99 for which they filed D-3 intimation indicating therein that the returned goods would be subjected to the process of rewinding; that the goods were verified by the Inspector; that the goods were despatched to M/s.

Hindustan Lever Ltd. (M/s. H.L.L. in short) on payment of duty under three invoices dated 30.10.99, 31.10.99 and 1.1.99; that the Assistant Commissioner, under Order-in-Original dated 30.3.2001, rejected the refund claim on the ground that the goods had been substituted as 3625 kgs. were received back as against originally supplied quantity of 2093 kgs. and sufficient evidence had not been furnished to the effect that the returned goods were processed and were cleared on payment of duty; that the Commissioner (Appeals) has also rejected their appeal.

3.2. The learned Advocate submitted that they had received back a quantity of 3625 kgs. of wrapper out of 4243 kgs. cleared earlier by them to Vashisti Detergent and the Range Inspector had verified the said quantity; that they had complied with the provisions of Rule 173L of the Central Excise Rules, 1944.

3.3. A perusal of D-3 intimation submitted by the Appellants to the Department on receipt of the goods clearly shows that 3625 kgs. of wrapper were received back which were earlier removed under two invoices. This is also supported by the fact from the invoice No.0002364, dated 17.10.99 under which M/s. Vashisti Detergents Ltd. had returned the goods. Moreover, the Revenue has not controverted the contention of the Appellants that returned goods had been verified by the Range Inspector. It is also not the case of the Revenue that the provisions of Rule 173L have not been followed by the Appellants. It appears that the Adjudicating Authority has referred to only one invoice No. 495 which was for 2093 kgs. and did not take into consideration the second invoice No. 525 under which 2150 kgs. of wrappers were removed. In view of this the Appellants are eligible to the refund of duty in respect of these goods. [Appeal No. E/1004/03-NB]
4.1. The learned Advocate mentioned that the Appellants had cleared, under invoice Nos. 402, dated 16.6.99 and 553, dated 12.7.99 Lifebuoy 75 GMS Soap Wrappers weighing 26.4 kgs. and 758.0 kgs. to M/s. H.L.L.

who returned 778 kgs. on 7.9.99 on account of loose winding; that they filed D-3 intimation with the Department and the Inspector verified the goods on 7.9.99 itself; that the goods were sent back to M/s. H.L.L.

after rewinding on 15.9.99; that the Assistant Commissioner, under Order dated 30.3.2001 rejected their refund claim on the ground that the goods had been totally substituted as printed PET/BOPP-Laminated PAP was received back as against originally cleared item Polyster/BOPP F.M. Laminated with PPR; that the Commissioner (Appeals) has also rejected their appeal holding that the goods are not same and as such Rule 173L does not apply.

4.2. The learned Advocate submitted that for the purpose of Rule 173L, excisable goods originally cleared, received back and cleared after processing need not be the 'same' but should be of 'same class' and fall under 'the same Tariff Heading'; that as both the goods fall under the same Tariff Heading, the Appellants are eligible for the refund of duty.

4.3. The submissions of the learned Advocate are not well founded. In both invoices under which the goods were removed by the Appellants on payment of duty, the description of goods was 'Lifebuoy 75 GM Wr-GAJ' and it was also mentioned against commodity as "Polyster/BOPP F.M.Laminated with PPR". The description of goods returned by M/s. H.L.L.

was mentioned as "Printed PET/BOPP Laminated PAP 115.6/REEL." Thus there is a change in the description of the goods sent back by M/s.

H.L.L. It is required for the application of Rule 173L of the Central Excise Rules that the goods which were cleared for home consumption from the factory are returned for being re-made, refined, etc. As the goods are not the goods which were cleared for home consumption from the factory, provisions of Rule 173L are not attracted. All the decisions and Board's Circular F. No. 261/23A/2178-CX, dated 21.2.80 relied upon in the grounds of appeal are not applicable as they refer to the goods cleared after carrying out the process of refining etc.

and not to the goods received back from the customers. Thus the refund of duty is not admissible to the Appellants in respect of these goods.

[Appeal No. E/1005/03-NB] 5.1. The Appellants in Appeal No. 1006/03-NB had cleared Lifebuoy 150 GMS Soap wrappers weighing 2085 kgs. & 1339 kgs. under two Invoice Nos.

340 & 341 both dated 5.6.99 on payment of duty Rs. 94,997/- to M/s.

H.L.L. who rejected 2488 kgs. and returned the same to the Appellants on 15.7.99 for which they filed requisite D-3 intimation. The Range Inspector also verified the goods and endorsed the entry in the records maintained for this purpose. After rewinding the goods, they cleared wrapper 1843 kgs. on payment of duty Rs. 51,133/-on 15.10.99 and filed claim for refund on 10.1.2000. The Assistant Commissioner, under Order dated 30.3.2001 rejected the refund claim on the ground that 305 reels were received back against originally supplied 206 reels and the sufficient evidence had not been put forth that the goods which had been returned were processed and were cleared on payment of duty. The Commissioner (Appeals) has also rejected their appeal holding that the goods which were cleared originally were not received for reprocessing and the goods which were cleared again were the fresh goods.

5.2. After hearing both the sides and perusing the invoices, D-3 intimation, etc. brought on record by the learned Advocate, I observe that the Appellants had initially removed wrapper weighing 2085 + 1339 = 3424 kgs. under invoice Nos. 340 and 341 and the goods had been verified by the Range Inspector on receipt of D-3 intimation which clearly mentions only 206 reels as originally removed. Both the Orders passed by the lower authorities do not mention that the provisions of Rule 173L were not followed. Thus the refund claim cannot be rejected merely on the ground that the invoice dated 11.7.99 under which the goods in question were sent back by M/s. H.L.L. mentioned 305 Rolls instead of 206 Rolls, particularly when the said invoice referred to Appellants invoice Nos. 340-41 dated 5.6.99 and goods had been verified by the Range Officer. The appeal is thus allowed.

6.1. In appeal No. E/1007/03-NB, the Appellants had cleared Hot melt 3404 to M/s. Creative Poly Pack under invoice No. 432 dated 22.6.99 for 500 kgs. on payment of duty. The customer returned 300 kgs. of the goods for which the Appellants filed D-3 intimation indicating therein that the returned goods would be subjected to the process of cutting/slitting. The Assistant Commissioner rejected the refund claim on the ground that the goods had been substituted as Hot melt

XXX was sent after reprocessing against the originally cleared Hot melt. The Commissioner (Appeals) has also rejected the appeal holding that the Appellants had not produced any evidence that Hot melt and Hot melt XX are the same thing.

6.2. The contention of the Appellants is well founded that both goods are of same class and it is not necessary that the goods should be same. The Board has clarified vide Circular No. 21/88, dated 1.3.1988 that "Rule 173L relates to refund of duty in respect of duty paid excisable goods brought back in the factory for reprocessing, re-manufacture, etc. This is, no doubt, a facility extended for the benefit of the trade." Earlier vide Circular F. No. 261/23A/2178-CX, dated 21.2.80, the Board has clarified that the provisions of Rule 173L would not bar refund in cases if the goods of the same class are manufactured. Similar views have been expressed by the Tribunal in CCE v. Insulated Conductors (P) Ltd. by holding that if the goods received and goods manufactured and cleared fall in the same Tariff Item, they should be considered as goods of the same class and eligible under Rule 173L. There is nothing brought on record to show that the goods cleared by the Appellants after reprocessing were not of the same class. Accordingly the refund of duty is admissible to the Appellants.