Commissioner of Central Excise Vs. Promact Plastics

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-03-2005

Reported in : (2006)(193)ELT509Tri(Mum.)bai

Judge : R Abichandani, M T K.C.

Appellant : Commissioner of Central Excise

Respondent : Promact Plastics

Judgement :

1. These two appeals are filed by the Revenue against the Orders-in-Appeal Nos. 1082 to 1083/99 (205 to 206-Ahd-II) CE/Commr. (A) Ahd. dated 6-8-99 passed by the Commissioner of Central Excise (Appeals), Ahmedabad.

2. M/s. Promact Plastics Ltd. filed refund claims for Rs. 49,45,029/- for the period from 12-1-87 to 31-3-91 and for Rs. 35,43,549/- for the period from April 1991 to March 1992 consequent to resolution of the dispute of classification of HDPE tapes under Chapter 54 and sacks made out from such tapes. The Assistant Commissioner after examining the reclassification of the products worked out Modvat credit available to the appellants on HDPE granules and total duty paid by them on HDPE tapes and worked out the duty payable on strips after reclassification under sub-heading 3920.32 and found that excess amount of Rs. 17,64,579/- for the period from April 1991 to March 1992 and Rs. 29,17,364/- for the period from 12-1-87 to 31-3-97 was refundable to M/s. Promact Plastics Pvt. Ltd. The department filed appeal against these two orders of the Assistant

Commissioner sanctioning the refund which was decided by the Commissioner (Appeals) under Order Nos.

317-323/97(91 to 97) Ahd./CE/Commr.(A), dated 12-6-97. In the said order, the Commissioner (Appeals) gave direction to the Assistant Commissioner for recalculation of the refund due in Modvat account.

Against this order of the Commissioner (Appeals) the department filed appeal before the Tribunal which was decided by the Tribunal under Order No.C-I/563-564/WZB/2003, dated 28-2-2003 upholding the Order of Commissioner (Appeals) and rejected the appeal of Revenue.

3. The present appeal of the Revenue before us is against the Order in Appeal Nos. 1082-1083/99 (205-206-Ahd.II), dated 14-7-99 of the Commissioner (Appeals). We find that in this Order-in-Appeal, the Commissioner (Appeals) has decided the appeals filed by Revenue against Orders-in-Original No. 89/Ref/96-AC and 90/Ref./96-AC both dated 24-5-96. We also find that in the Orders-in-Appeal No. 317-323/97 (91 to 97) Ahd./CE/Comm.(A), dated 12-6-97 Commissioner (Appeals) decided appeals against Orders-in-Original including Orders-in-Original No.89/Ref/96-AC and 90/Ref/96-AC and appeals against this order of Commissioner (Appeals) have already been finally decided by the Tribunal in its Order No. C-I/563-564/WZB/2003, dated 28-2-2003. Thus, the impugned orders passed by Commissioner (Appeals) are not maintainable as the issue has already been decided by the Commissioner (Appeals) under Order-in-Appeal Nos. 317 to 323/97 (91 to 97-Ahd.)/CE/Commr.(A), dated 12-6-97. It is not made clear to us that in what circumstances the second set of appeals were filed by the department when the matter had already been decided by the Commissioner (Appeals) and the department had gone in appeal before the Tribunal.

4. We, therefore, set aside the impugned orders of Commissioner (Appeals) and remand back the matter to him to find out the correct facts and to reconsider the issue in the light of the decision of the Tribunal in Order Nos. C-I/563-564/WZB/2003, dated 28-2-2003.