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Cce Vs. Prabhat Chemicals

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-26-2005

Judge : M Ravindran

Appellant : Cce

Respondent : Prabhat Chemicals

Judgement :

1. The Revenue has preferred this appeal against the Order of the Commissioner (Appeals) wherein the Respondent's appeal was allowed.

2. The relevant facts in the case for consideration are that the Respondents were directed by the authorities below to deposit an amount of Rs. 18,154/- as duty against the show cause notice issued which the Respondent did so by debiting the amount in RG23A Part-II, "UNDER PROTEST". The Respondents contested the show cause notice and were successful in their appeal. They filed refund claim of the above said amount, but the said claim was rejected by the adjudicating authority on the ground that the refund claim is time barred. The Respondents appeal found merit with the Commissioner (Appeals) and their appeals were allowed. Revenue is contesting the said Order-in-Appeal.

3. Heard the D.R. and considered the written submissions made by the Respondents.

4. I find that the learned Commissioner (Appeals) has in his order-in-appeal at Para 4 has held as under:- I have carefully gone through the facts of the case on records, submissions made through appeal memo. I find that in the instant case the issue is to be decided is only relevant date. I find that the Hon'ble Tribunal in the case of Commissioner v. Abhideep chemicals Private Limited held that "duty paid while filing appeal to contest liability is payment of duty under protest and refund not hit by normal limitation period by relied upon Para 83 of Apex Court judgment in Mafatlal Industries -, holding that it is difficult to imagine that a manufacturer would pay duty without protest even when he contests the levy of duty, its rate, classification or any other aspect. The Hon'ble Tribunal further in the case of Nepa Limited v. CCE, Indore held that "duty paid in pursuance to adjudication order is a payment under protest. In fact filing of appeal against the adjudication order demanding duty is itself protest and if appeallate authority has set aside the adjudication order, the duty deposited by the assessee becomes refundable to him.

Following the ratio of above said judgements, the Appellant can file the refund claim within six months from the date of receipt of appellate order issued in their favour. In the instant case, the appellate order was issued on 22.07.1994 and the Appellant has filed the refund claim on 14.08.1994, thus I hold refund claim was filed within six months hence, refund of duty paid against demand which has subsequently gone in their favour, is refundable to the Appellant. Therefore, in view of the aforesaid discussion, I set aside the impugned order and allow the appeal.

It can be seen that the said order of the Commissioner (Appeals) has correctly brought out the law involved in the issue. Said amount has been deposited by the Respondent pending the adjudication proceedings and that also 'under protest'. The amount which is legitimately due to the Respondent cannot be sought to be denied, in the pretext of the procedural wrangles, like not filing the letter of protest under Rule 233B. Further, I find that the provisions of Rule 233B, are envisaged, if the assessee wants to continue the payment of duty on his clearances "Under Protest." The provisions of Rule 233B of Central Excise Rules, 1944 will not attract to this case.

5. In view of the above situation, the order of the Commissioner (Appeals) deserves to be upheld and the departments appeal deserves to be dimissed.

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