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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-26-2005

Judge : M Ravindran

Appellant : Ester Industries Limited

Respondent : Cce

Judgement :

1. In this appeal the appellants are aggrieved by the rejection of their refund claim by the authorities.

2. The relevant facts of the case are that the appellants are manufacturer of Polyster Chips, Polyster films, Polyster Filament Yarn.

The appellants cleared polyster film (T.F.-12 Grade) from their factory on payment of appropriate duty to their depots. Due to some technical problems some quantity of the duty paid, Polyster film was brought back for farther processing. The appellants filed the proper D-3 declarations and the other relevant documents to the Revenue authorities. The Revenue authorities duly verified the D3 declarations.

The appellants after removing the defects, cleared the goods for "Export under Bond" from their factory, by debiting the B1, Bond Register, They submitted the proof of export to the authorities and claimed Refund of duty paid, under Rule 173L on the goods received back from their depot. A show cause notice was

issued to the appellants for rejection of the said refund claim, The adjudicating authority while adjudicating the show cause notice, got the refund claim verified, reduced the amount of refund claim and rejected the refund claim on the sole ground that, when the goods were cleared second time, the duty liability is not discharged by the appellants as the goods have been removed under Bond. On an appeal the Commissioner (Appeals) upheld the adjudication order.

3. Learned advocate for the appellants submits that the Commissioner (Appeals) was wrong in dismissing their claim as the goods were cleared under Bond from the appellants factory. He submits that the debits made in Bond Register is equivalent to the debits made in PLA/RG23A, Part II Registers. He also submits that the clearances of goods for export under Bond is always considered as duty discharged goods and not an exempted or duty paid at the 'nil' rate. He also submits that this Hon'ble Tribunal has clearly settled the law on this issue in the following cases:Relexo International v. CCE, New Delhi 4. Learned D.R. submits that the appellants are not eligible for refund as they have not discharged the duty from PLA/RG23AA Part II and the clearances under Bond is a clearance under Special Scheme, which is to be considered as removal of goods on payment of nil rate of duty.

5. Heard both sides at length, considered their submissions and perused the record. It is not in dispute that the goods were originally cleared form the factory of the appellants and it is also not in dispute that the same goods have been received back. The authorities at Range level have verified the D3 intimation and hence there is also no dispute about the identity of the goods. It is also not disputed by the Revenue that the goods exported are the same, which were received back. It is also an admitted fact that the appellants have executed a B1 Bond with proper authority, and has been exporting their goods by making a debit entry in the B1 Bond Register maintained. The proof of export is also accepted in respect of goods which is evident from the credits made in B1 Bond Register. The refund claim is preferred by the appellants under Rule 173L of the Central Excise Rules, 1944. Under the said Rule the refund of the duty 'Payable' after reprocessing is contemplated and does not contemplate a situation involving actual payment of duty. This has been held by this Tribunal in the case of

Metazinc (I) Ltd. . This Tribunal in its order in the case of LML Ltd. (supra) has held that "the goods returned after reprocessing, exported under Bond, refund is admissible since the goods were not exempted and duty was payable on them." It is a settled law that if the goods cleared by the appellants for export is not exported for any reason, the duty is demanded as such goods, which itself is an indication that the goods cleared for export under Bond are not exempted goods. Since the adjudicating authority has already come to a conclusion that the refund claim of the appellants has to be restricted to Rs. 1,07,128.28 after verifying the claim appellant, the refund claim to that extent is allowable to the appellants.

6. In view of above situation, the impugned order-in-appeal deserves to be set aside. Accordingly, order-in-appeal dated 6.10.2003 is set aside and appeal is allowed.

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