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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-16-2005

Judge : M T K.C.

Appellant : Sunpac India Pvt. Ltd.

Respondent : Cce

Judgement :

1. The appellants are manufacturer of laminated plastic films and other items falling under Chapter 39 of the First Schedule to the Central Excise Tariff Act, 1985. They were availing the facility of modvat credit. On 11.12.1997, there was a fire in the factory premises of the appellants and the finished goods, raw materials and capital goods lying in the factory were destroyed. The appellants wrote to the Superintendent of Central Excise with a copy to the concerned Assistant Commissioner informing that there was a fire in the factory and all machines, raw materials, finished goods and central excise records had been burnt to ashes. The appellants also informed the police and the fire department immediately. The central excise authorities were requested to appoint an officer to conduct a survey of the factory and ascertain the extent of damage. On 17.12.1997, the appellants filed a claim for remission of duty on the goods lost in the fire. The appellants also provided details of the raw materials, finished goods, capital machines lost in the fire. On the direction of the Superintendent, the appellants reversed the amount of Rs. 32,392/- on 2.2.98 in respect of the credit on raw materials destroyed in the fire.

On 2.7.98, show cause notice was issued to them demanding duty of Rs. 1,28,250/- in respect of the finished goods treating them as removed without payment of duty. Show cause notice was adjudicated confirming the demand on the ground that the Commissioner of Central Excise, Delhi-III has turned down the request for remission of duty on the goods for the reasons given in that letter. The appeal filed by the appellants was rejected by the Commissioner (appeals) on the ground that the original authority has passed the order consequent to rejection of the request of the appellant for remission of duty by the Commissioner. Non-supply of the copy of the order passed by the Commissioner was never agitated by the appellant before the lower adjudicating authority. Hence their plea of non-receipt of the order cannot be accepted.

2. Now, it is pleaded that they had applied for remission of duty on 17.12.97 for the goods destroyed in the fire. They claimed that reminders were issued to the concerned authority but they had not received any order on their remission application. They first time came to know about the order passed by the Commissioner rejecting their remission application from the order of the adjudicating authority.

Till date, they had not received copy of the order of the Commissioner rejecting their remission application. It was stated that when they have not received the order of the Commissioner rejecting remission application, they did not get any opportunity to contest the findings of the Commissioner rejecting remission. They are, therefore, handicapped to defend their case in respect of the show cause notice issued to them demanding duty as it was not disclosed to them that their remission application had been rejected and the grounds of rejection were also not known to them. It was, therefore, pleaded that their appeal may be allowed on this ground alone. Remanding the case after 8 years will not serve the purpose as records will not be available to defend the case. It was also pleaded that when quantity of goods claimed to be destroyed has been considered as wrong then for the same quantity, demand cannot be issued.

3. On behalf of the Revenue, it was pleaded that on 17.9.1999 the Commissioner's order rejecting remission application was communicated to the divisional Assistant

Commissioner. However, whether any copy was sent to the appellants or not, cannot be confirmed. It was stated that the reasons given for rejection of remission application are that there is a variation in the figures supplied by the appellants and they could not have manufactured the semi finished/finished goods from raw material issued from 1.12.97 to 11.12.97 for which remission of duty has been claimed. The appellants have failed to establish that insurance claim did not cover the duty amount. It was conceded by the Revenue that not intimating the rejection of the claim of remission has adversely affected the appellant in defending their case. They neither got an opportunity to file the appeal against the order of rejection of remission nor they got an opportunity to defend the case before the lower authority as they had mentioned in their letter dated 25.3.99 in reply to the show cause notice that in their application dated 17.12.1997 for remission of central excise duty on goods lost in fire, they have stated that the goods destroyed in the factory cumulatively 4500 kgs. collectively valued at Rs. 5,74,000/- involving the central excise duty of Rs. 1,28,250/- as per details given in the Annexure.

4. I have considered the submissions made by both sides. I find that the decision on the application dated 17.12.97 for remission of duty of Rs. 1,28,250/- was not communicated to appellants. The remission application was rejected on the ground that appellants could not have manufactured the quantity of semi finished and finished goods from the inputs issued between 1.12.97 and 11.12.97. If this position is accepted then the demand can also not be issued for the disputed quantity for which remission is claimed. The appellants were prevented from putting proper defence before the adjudicating authority by not intimating the out come of their remission application to them. When the appellant's remission claim was rejected on the ground that they could not have manufactured the goods from input issued, then question of demanding duty on those goods also does not arise. Under these circumstances, the order passed by the Commissioner (appeals) is set aside and the appeal is allowed.

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