Milton Laminates Ltd. Vs. Cc

Milton Laminates Ltd. Vs. Cc

SooperKanoon Citation : sooperkanoon.com/42410

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-12-2006

Judge : M Ravindran

Appellant : Milton Laminates Ltd.

Respondent : Cc

Judgement :

1. This appeal is directed against the Order-in-Appeal dated 16.3.2005 wherein Order-in-Original rejecting the refund claim in cash is upheld.2. The issue involved in this case is that the appellants had imported some goods and filed bills of entry for assessment. The said bills of entry were assessed and the appellants produced DEPB license for the debit of duty amount payable against the inputs. The adjudicating authority did not accept the invoice value and enhance the same. On appeal the Commissioner (Appeals) upheld the order of the adjudicating authority. On appeal against the assessment the Tribunal accepted the contention of the appellants and reduced the assessable value. Due this reduction in assessable value the appellants have debited Rs. 4,49,253/- in excess in DEPB. The appellants filed a refund claim of this amount from the authorities in cash. The adjudicating authority vide its Order-in-Original dated 29.6.2004 allowed the refund and sanctioned a refund claim of Rs. 4,49,253/- but directed the appellants to re-credit the same in DEPB license under which duty was debited. He rejected the appellants' contention for getting the refund in cash. On appeal the Commissioner (Appeals) upheld the order on identical grounds. Hence, this appeal.

3. Learned Advocate appearing for the appellants submits that DEPB license which was wrongly debited by the authorities has deprived him of the benefit of cash inasmuch as (sic) the appellants would have sold DEPB with higher amount of duty, they were deprived of selling this till the decision is given in their favour. It is his submission that they cannot avail of the benefit of DEPB credit as the said license has expired. He also refers to Section 27 which says that refund is allowable to the assessee, if the amount is paid. It is submission that once the DEPB is debited that means they have paid the amount of DEPB.4. Learned D.R. on the other hand submits that the amount of duty that can be refunded to the appellants in cash (sic) only under the provisions of Section 27 which says that if the duty has been paid or borne by the assessee then the refund is eligible. It is his submission that the amount of debit in DEPB is recovered under notification No.34/97 which exempts payment of duty of Customs provided the DEPB license is produced before the authorities. So it is his submission that no duty has been paid to the Government of India.

5. Considered the submissions made by both sides and perused the records. In order to appreciate the rival contentions it is necessary to reproduce the provisions of Section 27(1) which reads as under: SECTION [27 Claim for refund of duty. - (1) Any person claiming refund of any [duty and interest, if any, paid on such duty] - may make an application for refund of such [duty and interest, if any, paid on such duty] to the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] - (a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, before the expiry of one year; from the date of payment of [duty and interest, if any, paid on such duty], [in such form and manner] as may be specified in the regulations made in this behalf and the application shall be accompanied by such documentary or other evidence (including the documents referred to in Section 28C) as the applicant may furnish to establish that the amount of [duty and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such [duty and interest, if any, paid on such duty] had not been passed on by him to any other person: Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application

shall be deemed to have been made under this sub-section and the same shall be dealt with the provisions of Sub-section (2): Provided further that the limitation one year or six months, as the case may be, shall not apply where any [duty and interest, if any, paid on such duty] has been paid under protest.

[Provided also that in the case of goods which are exempt from payment of duty by a special order issued under Sub-section (2) of Section 25, the limitation of one year or six months, as the case may be, shall be computed from the date of issue of such order.] From the above reading, it can be seen that refund claim can be preferred by any person, if he has paid the duty in pursuance of an order of assessment or duty borne by him. In order to avail the benefit of Section 27 it has to be proved that the amount which has been claimed as refund has been paid by the person.

6. Customs duty imposed under the Customs Tariff Act are exempted under the provisions of Section 25. Provisions of Section 25 empowers the Government of India to grant exemption from payment of Customs duty.

Notification No. 34/97-Cus dated 7.4.97 (as amended) was issued under power conferred under Sub-section (1) of Section 25 of the Customs Act, 1962. Notification reads as under: Exemption to Import made under Duty Entitlement Pass Book. - In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods imported into India from - (1) the whole of the duty of Customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975); and (2) the whole of the additional duty leviable under Section 3 of the said Customs Tariff Act where specifically claimed by the importer, subject to the following conditions, namely: Explanation - For the purpose of this notification "export and Import Policy" means the Export and Import Policy April, 1997 - March, 2002 published vide notification of the Government of India in the Ministry of Commerce No. 1/1997-2002, dated the 31st March, 1997.

From the above reproduced notification it is very clear that customs duty and the additional duty leviable under Customs Tariff Act has been exempted provided the importer specifically claims the same, subject to the conditions specified in the notification.

7. In the issue before me, in this case the appellants were sanctioned refund for re-credit under DEPB license. There is no ambiguity in sanctioning authority's order for the simple reason for having not paid the amount in cash the appellant is not entitled to get the refund in cash. The contention of the appellants that their DEPB license is expired is of no consequence to the sanctioning authority for the reasons that it was for the appellants to keep alive his DEPB license, having preferred redressal before higher judicial form. If he is negligent to take care of his own affairs, he cannot seek indulgence from the Courts.ESSAR Steel Ltd. v. CCE, Vishakhapatnam reported at had occasion to decide whether if a person paid the amount of DEPB by debiting in pass book, is eligible to avail the Modvat Credit. The Tribunal in it is order, at Para 6 has held as under: 6. Notification 34/97-Cus. Exempts goods from payment of duty when the amount representing such duties is debited in the pass book.

Thus a person who has not availed the benefit of the Notification and pays duties alone can take Modvat credit. When the importer pays duties of customs in part by cash, he is not availing the benefit of the said Notification to that extent.

I find that the ratio of the decision of the Larger Bench is very clear, that if a person who has not availed the benefit of notification No. 34/97-Cus and paid the duty can alone avail the benefit of Modvat of the Countervailing duty. In the case before me, if the appellants would have paid the amount in cash and contested it, he would have been eligible to get the amount of refund in cash. Since the amount has been debited by the appellants in DEPB he has been granted refund of the amount by way of Credit in DEPB Scrip.

8. In view of the above facts and circumstances I do not find any reason to interfere in the impugned Order. Accordingly appeal is dismissed.