Collector of C.E. Vs. Doaba Cooperative Sugar Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-17-1988

Reported in : (1989)(40)ELT428TriDel

Appellant : Collector of C.E.

Respondent : Doaba Cooperative Sugar Mills

Judgement :

1. The question for decision in this appeal by the Revenue is whether rate of duty and tariff valuation should be as on the date of actual removal of goods from factory or warehouse in terms of Rule 9A(1)(ii) of Central Excise Rules, 1944 or as on the date of payment of duty under Rule 9A(5) ibid. While the Assistant Collector applied Rule 9A(5), the Collector of Central Excise (Appeals) applied 9A(l)(ii) and reduced the demand of duty from 8% to 1%. Hence the present appeal.

2. At the hearing of the appeal Shri Chakraborty, JDR submitted that the rate of duty and tariff valuation should be under Sub-Rule (5) of Rule 9A i.e., as on the date of payment of duty. Controverting his submission Shri H.S. Mew, Advocate defended the impugned order and submitted that the Collector (Appeals) has rightly applied Rule 9A(1)(ii) as in the present case the date of actual removal of goods was known to the Revenue. In support of his argument he relied on the following two decisions.Hastings Mill Ltd. Calcutta v. Collector of Central Excise, CalcuttaJ.K. Cotton Spinning & Weaving Mills Ltd. and Anr. v. Union of India and Ors.

3. We have carefully considered the submissions advanced by the parties. The two decisions relied on by the learned Counsel for the respondent are not germane to the point in controversy in the present appeal. However, we see no reason to come to a finding different from the learned Collector of Central Excise (Appeals). There is no gainsaying that the date of removal of goods (which was between 1.3.75 to 29.4.75) is known to the Department. Rule 9A(1)(ii) provides for duty and tariff valuation as on the date of actual removal of goods.

Sub-rule (5) is residuary rule and would apply only when other rules are not applicable to the goods. As the date of actual removal of goods is within the knowledge of Revenue we find no infirmity in the finding of the Collector (Appeals) in his applying Rule 9A(1)(ii) i.e., duty as on the date of actual removal of goods. We therefore dismiss the appeal.