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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-14-2006

Reported in : (2006)(111)ECC218

Judge : M Ravindran

Appellant : Rallis India Ltd.

Respondent : Cce

Judgement :

1. These appeals are directed against Order in Originals dated 06/10/05.
2. The relevant facts are arise for consideration are that the appellant had exported their goods i.e. Metribuzin 70% WP (Pesticide) under claim for duty draw back. The appellant filed the duty draw back application for the exports made by them for fixation of brand rate with the Bhopal Commissionerate. The said applications were made by the appeals beyond the period of 60 (sixty) days but within the period of 90 (ninety) days from the date of export. They also filed an application for condonation of delay in not filing the draw back claim within 60 (sixty) days. The said application of condonation of delay were rejected by the Commissioner vide his orders dated 06/10/05. Hence this appeal.
4. Heard the learned DR and perused the records. I find from the records that the Commissioner has dismissed the application of the appellant for condonation of delay by observing as under: On careful examination of proviso to Rule 6 of

Customs & Central Excise duties DBK Rules, 1995 as amended (hereinafter referred as to DBK Rules), I find that the applicant should seek the extension from the jurisdictional Commissioner before expiry of 60 days stipulated for filing of brand rate application stating the reasons which prevented them to file their application for fixation of brand rate.

The applicant neither in written request nor at personal hearing has disclosed the concrete reasons beyond their control which prevented them to file the application within stipulated period of 60 days.

The reasons that they could not file their application due to late receipt of Export document from Customs/CHA, distance problem and multi factory location can not be considered a sufficient cause which prevented them to file their application. The sufficient cause is a cause, which can be described as one beyond the control of the applicant. The late receipt of export document from Customs/ CHA, distance problem and multi factory location can not be considered a sufficient cause for delay in filing the application. The cause for delay given by, the applicant could have been avoided by due care, caution and attention, but they did not care and delayed filing the application.

The cause given by the applicant could hardly be called as sufficient cause as provided under the proviso to Rule 6 of DBK Rules.

5. From the above, it can be seen that the learned Commissioner has not considered the fact that the appellant had sought the condonation of delay for filing the application for draw back, with a sufficient cause. Since the issue involved in this case is regarding the beneficial scheme of fixation of the draw back rate, to my mind, the Commissioner should have condoned the delay and should have processed the draw back claims as filed by the appellants. I find that the Central Board of Excise and Customs vide DOF letter No. 603/32/2003-DBK dated 9th December, 2003 communicated to the Commissioner of Central Excise, Mumbai directed as under: 2. As you may be aware under Rule-6/Rule-7 of the Customs and Central Excise Duties Drawback Rule, 1995, a manufacturer or exporter may file an application for fixation of rate of drawback or a special rate of drawback, as the case may be, within 60 (sixty) days from the Let Export Date. The

Commissioner of Central Excise can allow a further period of 30 days having satisfied that the manufacturer/exporter has been prevented by sufficient cause for making the application within the period of 60 days.

3. In the interest of export promotion and as a measure facilitation to the exporters, the Ministry had never taken such a restrictive approach in condoning the delay of 30 (thirty) days beyond the normal period of 60 (sixty) days and the manufacturer/exporter were permitted to file a simple request for such extension within the said time limit of $60+30 = 90$ (ninety) days. Any approach for not condoning the delay of 30 (thirty) days beyond a period of 60 (sixty) days may run contrary to the approach adopted earlier by the Ministry, and may result in tremendous resentment by the trade and industry and ultimately affect the exports. It is, therefore, suggested that a liberal approach be adopted to condone the delay of 30 (thirty) days beyond the usual period of 60 (sixty) days for filing an application by manufacturer/exporter for fixation of duty drawback rate/amount in respect of the exports made by them under claim for drawback.

6. A plain reading of direction of Central Board of Excise and Custom, it would make it clear that, a liberal approach has to be adopted by the lower authority while disposing the application of condonation of delay, in respect of draw back claims. It is now settled law that the directives of the Board are binding as the officers. In this case the lower authorities have not followed the directives in its letter and spirit.

7. Accordingly, the application for condonation of delay in filing the drawback claims is allowed, impugned orders set aside and the matter is remanded back to lower authorities to process the draw back claims into accordance with law. Appeals allowed.

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