

Simplex Pharma (P) Ltd. Vs. C.C.E.

Simplex Pharma (P) Ltd. Vs. C.C.E.

SooperKanoon Citation : sooperkanoon.com/43162

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-20-2006

Reported in : (2006)(111)ECC1

Judge : M Ravindran

Appellant : Simplex Pharma (P) Ltd.

Respondent : C.C.E.

Judgement :

1. This appeal is directed against the order in appeal-dated 7.6.2004, which upheld the order in original rejecting the refund claim of the appellant.

2. The relevant facts that arise for consideration are that the appellant imported raw material for the manufacture of injections. The imported raw material suffered CVD. Appellant exported the injections manufactured by using the said raw material and filed a refund claim with the authorities under Section 11B of the Central Excise Act, 1944.

The authorities rejected the said refund claim on two grounds i.e. on limitation and on non-applicability of the provisions for refund claim to CVD. On an appeal the Commissioner (appeals) also concurred with the views of the adjudicating authority. Hence this appeal.

3. Learned advocate appearing for the appellant submits that the CVD paid is nothing but duty of excise. It is his submission that the denial of the refund is only

on the technical ground and that there is no dispute as regards the consumption of the imported raw materials. It is also submitted that question of the time bar has been wrongly construed as the date of importation of the raw material is considered while the date of export has to be considered for sanctioning the refund. He relies upon the judgment of the Hon'ble Supreme Court in the case of Hyderabad Industries Ltd v. UOI as reported at for the proposition that CVD is nothing but duty of excise.

4. The learned DR on the other hand submits that the CVD paid is under the Customs Tariff act, and as such the refund claim, if any, has to be under provisions of Customs Tariff Act. The provisions of Section 11B would not be applicable for such refund. It is his submission that the CVD may be described as duty of excise but it is a customs duty and is only equivalent to the excise duty payable on such products if manufactured in India. He supports the impugned order on the ground that Section 11B envisages the refund of the duty of excise.

5. Considered the submissions made by both sides and perused the records. It is not in dispute that the raw material imported by the appellant is consumed in the manufacturing of injections, which were ultimately exported. It is also not in dispute that the appellant discharged the CVD liability on the imported raw materials. The short question that arises for consideration is whether the refund claim as filed by the appellant for the CVD paid is entertainable under Section 11B of the Central Excise Act, 1944. The provisions of Section 11B would have to be looked in to for appreciating the correct law, which are reproduced as under; Section ^3[11B. Claim for refund of duty. -- (1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the ^4[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of ^1[one year] ^2[from the relevant date] ^3[^4[in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in Section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of 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 as amended by the said Act and the same shall be dealt with in accordance with, the provisions of Sub-section (2) substituted by that Act:] ^5[Provided further that] the limitation of ^6[one year] shall not apply where any duty has been paid under protest.

^8[(2) If, on receipt of any such application, the ^9[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund: Provided that the amount of duty of excise as determined by the ^10[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to- (a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India; (b) unspent advance deposits lying in balance in the applicant's account current maintained with the 11 [Commissioner of Central Excise]; (c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act; (d) the duty of excise paid by the manufacturer, if he had not: passed on the incidence of such duty to any other person; (e) the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person; (f) the duty of excise borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify: Provided further that no notification under Clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in Sub-Section (2).

(4) Every notification under Clause (f) of the first proviso to Sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under Clause (f) of the first proviso to Sub-section (2), including any such notification approved or modified under Sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.] (A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India; (a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or (ii) if the goods are exported by land, the date on which such goods pass the frontier, or (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India; (b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid; (c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory; (d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any

period but before the expiry of that period such rate is reduced, the date of such reduction; ^1[(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;] ^2[(ea) in the case of goods which are exempt from payment of duty by a special order issued under Sub-section (2) of Section 5A, the date of issue of such order;] ^3[(eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;] It can be seen that Sub-section 2(a) of Section 11B categorically states that the rebate of duty of excise on goods exported or on excisable materials used in the manufacture of goods, which are exported, are eligible for refund. Further the explanation also very categorically states that "refund" includes rebate of duty as well as the duty of excise on excisable materials. In short the statute permits the refund of the duty of excise on materials used in the goods exported. It is to be noted that the appellant is eligible for the benefit of the Modvat/Cenvat credit on the CVD paid by him, and this not disputed by the revenue. If he had availed the Modvat/Cenvat credit then he would have got the refund of the same under the very same provisions of Sub-section 2(c) of Section 11B. To my mind, rejecting the refund claim of the appellant without considering this aspect in the section would be improper appreciation of law. If the interpretation as sought by the revenue is construed, it would negate the salutary legislative intent to refund the amount to the appellants if he has utilized the materials and exported the final products. To my mind the revenue should be proactive to facilitate the growth of exports.

6. As regards the time bar issue I find that the appellant has claimed the refund of the CVD on the inputs after the same were consumed and the final products are exported. Explanation (B) to the Section 11B in itself specified the relevant date for such refund application. The explanation is very and hence the rejection of the appellants refund claim on the question of time bar does not arise as he has filed the refund claim within the stipulated period as mentioned in the Section 11B of the Central Excise Act, 1944.

7. Accordingly, in view of the facts and circumstances as mentioned above, the impugned order is liable to be set aside, and I do so.

Appeal allowed with consequential relief, if any.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com