

Poly Paper Converters Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-04-2006

Judge : T Anjaneyulu

Appellant : Poly Paper Converters

Respondent : Commissioner of Central Excise

Judgement :

2. These appeals are directed against an order dated 31.03.2005 passed by the Commissioner (Appeals), Central Excise, Zone-II, Mumbai.

3 The appellants M/s. Poly Paper Converters have availed Cenvat credit on the inputs used in the manufacture of final products. There was a fire accident in the premises of the appellants on 06.01.2002 wherein the raw-material as well as finished goods were destroyed due to fire.

The appellants, vide letter dated 14.10.2002 applied to the Commissioner, Central Excise, for remission of duty on finished products and duty on raw-material. The said application is rejected.

Thereupon a Show-Cause-Notices were issued demanding reversal of credit taken on the inputs as well as finished goods. The adjudicating authority confirmed the duty with interest. The Commissioner (Appeals), Central Excise, Mumbai also upheld the Order-in-Original. The same is challenged by the appellants before the tribunal on the following grounds.

4. The Commissioner did not provide an opportunity of hearing before rejecting the application for remission, thus there is a violation of principle of natural justice. Further, the appellants were not provided even copy of the order.

5. The learned Commissioner (Appeals) has failed to consider the judgment of the Tribunal of *B.S.N. Sugar Mills Ltd. v. CCE, Meerut* wherein it has been held that the Superintendent letter indicate that the Commissioner has rejected the remission application as if the Commissioner has passed an administrative order.

The Commissioner ought to have passed a speaking order on the remission application and served the same on the applicant.

6. The appellants herein, in the absence of copy of the order could not pursue the matter effectively and place reliance on *Foam Rubber Factory 1989 (43) ELT* and *Brooke Bond India Ltd.* which are cited in the case of *India Gypsum Ltd. v. CCE*. That the learned Commissioner has failed to consider the documents placed before him and relevant case law i.e. *IOL Ltd. v. CCE*, *Asmaco Plastic Industries v. CCE, Mumbai-III* *Universal Cables Ltd.*, 7. In the light of above, non-filing of appeal against the order of Commissioner is not set back as submitted by the Id. counsel for the appellants while relying upon the case law of *CCE, Raipur v. Hira Cement* 8. Further it is submitted that in a letter for remission of duty, it has been claimed that manufactured goods and raw material were destroyed and the same has not been considered by the learned Commissioner (Appeals).

9. In view of the grounds raised before the tribunal against order of the Commissioner in rejecting the remission and against the orders of both authorities below, it is quite felt expedient that the matter needs re-adjudication by the Commissioner (Appeals) by taking into consideration of all the circumstances that have been countenanced before the tribunal including cited case law. If necessary, the Commissioner (Appeals) call for record of the Commissioner, who had rejected the claim for remission and after perusing the same pass an order in according with the law. Therefore, matter is being remanded back to the Commissioner (Appeals) for fresh adjudication by providing an opportunity of hearing counsel for the appellants. In the result, both appeals are allowed in remand in above terms.