Hfcl (Wireless Division) Vs. Commissioner of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/43537

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-30-2006

Reported in : (2006)(105)ECC492

Judge : S Kang, Vice-

Appellant : Hfcl (Wireless Division)

Respondent : Commissioner of C. Ex.

Judgement :

2. The appellant filed this appeal against the order-in-appeal passed by the Commissioner (Appeals) whereby the refund claim of the appellant under Rule 173L of Central Excise Rules was rejected on the ground that the appellant had not complied with the condition of the Rule.

3. The contention of the appellant is that earlier the goods were cleared to M/s Tata Cellular Hyderabad on payment of duty, some of the goods were received back in the factory. As the goods were not up to the mark, the appellant filed necessary D-3 intimation on the receipt of the duty paid goods in the factory. The goods were received in the factory on 2-6-01 and were undergone re-testing and realignment and the same was completed on 14-6-01 and thereafter the goods were cleared on payment of duty to some other customers. The contention is that in the show cause notice, the allegation is that the appellant had not complied with the provision of Sub-rule (3) of Rule 173L of Central Excise Rules. The goods were celared after six months from the date of receipt and no account was

submitted to the proper officer regarding completion of process within the stipulated period. It is also alleged in the show-cause notice that the same goods were not cleared, as the description of goods in the invoices are different. The contention is that the process of retesting and realignment was completed on 14-6-01, which is within the six months from the date of receipt of the goods.

The appellant also filed D-3 intimation on receipt of the goods in the factory of goods in the factory. The contention is also that initially the goods were cleared on payment of duty and the goods were described in minus as DDF Module whereas the second time clearance it was described in full, as Digital Distribution Frame. In respect of other goods the same were cleared describing at the first time as multiplexure Card whereas the second time it was described in short form as Mus Card. The goods described in the first invoice as MBPS was described in the second invoice is MBPS Optimux. The contention is that in spite of these facts were before the adjudicating authority as well as before the Commissioner (Appeals), the claim was rejected. As the duty paid goods were received in the factory and D-3 intimation was sent to the Revenue regarding receipt of the duty paid goods and as per their record the necessary retesting and realignment was completed on 14-6-01 and the same goods were cleared on payment of duty on second time, therefore, the rejection of refund claim is not sustainable.

4. The Revenue relied upon the finding of the lower authority to submit that the appellant had not fully complied with the conditions of Rule 173L of Central Excise Rules.

5. I find that as per provisions of Rule 173L when the duty paid goods are received in the factory, the manufacturer has to intimate by filing D-3 intimation and further rule provides that the process is undertaken on the goods are to be completed within six months with due intimation to the Revenue. There is no prohibition that the goods must be cleared within six months from the date of receipt because it depends of availability of customers. In the present case, the Revenue is not disputing duty paid goods were not received in the factory as D-3 intimation was given to the Revenue. The appellant also produced evidence to show that retesting and realignment was completed and the goods were received on 14-6-01

i.e. within six months from the receipt of the goods. The description of the goods in the invoices when they are cleared first time and when the goods were cleared second time is also the same as at the time of clearance some abbreviations are mentioned in invoices whereas the second time the full description of the machines were also their. In these circumstances. The impugned order is not sustainable and set aside. The appeal is allowed.