Alliance Engineering Company Vs. Ccex

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-08-2006

Judge : A Wadhwa, V T M.

Appellant : Alliance Engineering Company

Respondent : Ccex

Judgement :

1. The appellant made the claim for refund of duty paid on Fluid Bed Dryers falling under Chapter 84 and cleared on payment of duty to M/s Cheminor Drugs Ltd., which is a 100% EOU. As per the appellant, the goods were exempted on production of CT-3 certificate and in terms of Notification No. 1/95 dated 4.1.1995. It is their case that they had a requisite CT-3 certificate and duty was paid by mistake. The original adjudicating authority after issuing the show cause notice, rejected the refund claim on the ground on non-fulfillment of Notification's condition and unjust enrichment. On appeal against the above order, Commissioner (Appeals) rejected the same by observing that one of the conditions mentioned in Para-1 of Notification in requiring following of procedure as contained under Rule 156A and Rule 156B of the Central Excise Rules, 1944, does not stand satisfied by the appellant. He held that such procedural laps is cannot be accepted because, if such lapses are allowed, it may facilitate to unknown fraud and great inconvenience to administration. He also recorded that CT-3 certificate in the prescribed format was well within the hands of the appellant manufacturer before clearance of the said goods on payment of duty and appellants have cleared the

goods without payment of duty in the past also and as such were aware of the procedure to be adopted. As such, he rejected the appellant's plea of oversight. The refund was also rejected on the ground of unjust enrichment.

2. After hearing both sides duly represented by Shri A.M. Chitnis, learned Consultant for the appellant and Shri Ajay Saxena for the Revenue, we find that there is no dispute that the goods were cleared to 100% EOU and were entitled to exemption in terms of Notification No.1/95, for which purposes they were issued CT-3 certificate also. As such, the substantive benefit of the Notification has been disallowed only on the point of non-following of procedure. At this stage, our attention has been drawn to the Tribunal's decision in the case of GMM Pfaundler Ltd. v. CCE, Vadodara reported in 2005 (191) ELT 1200 (Tri-Mum), wherein in Para 2, it has been held as under: 2. The appellant's grievance is that the procedure could not have been followed because the goods wee cleared on payment of duty. If they would have removed the goods under cover of AR-3, there was no question of payment of duty and subsequently refund claim. I agree with the above contention. The question of no following the procedure would not arise, according to the appellant when payment of duty was erroneous without realizing that their buyer were issued CT-3 certificate, being a 100% EOU. As such, if the appellant can otherwise establish that the goods which were sent by them to Protchem Industries (I) Ltd. Were covered under notification in question, they would be entitled to refund. For the said purpose, I remand the matter to the lower adjudicating authority who would examine the same afresh on merits as also on the point of unjust enrichment, which factor was not considered because the refund was rejected on merits. Appeal is disposed off in the above terms.

3. Inasmuch as the issue stands decided by the above decision, we set aside the impugned order and remand the matter to the original adjudicating authority for de-novo decision in the light of observation made in the above decision.