

Atul Limited Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-19-2007

Reported in : (2007)(117)ECC249

Judge : T Anjaneyulu

Appellant : Atul Limited

Respondent : Cce

Judgement :

1. Heard both sides. This appeal relates to dispute about the benefit of Notification No. 432/86 dated 6.10.1986 which pertains to set off duty on Naphthalene used in the manufacture of dyes and dyes intermediates. In the second round of litigation, the Commissioner of Central Excise and Customs(Appeals) has partly allowed the appeal by refunding the amount of Rs. 53,606.02 but rejected the claim of Rs. 5,59,906.50 due invalid documents.

2. The Commissioner (Appeals) in his impugned order after considering the material on record has found and upheld that an amount of Rs. 53,606.02 could not be denied to the appellants on the ground that a very miniscule percentage of the goods received and this is only a procedural aspect and this amount was admissible to the appellants.

However, as regards the amount of Rs. 5,59,906.50, he found that this amount was denied by the lower authorities as it pertains to 12 GP-1s not produced or the

same were not proper out of 30 GP-1s involved and accordingly the same were considered as invalid duty paying documents.

Similarly, two bills of entry out of 16 bills of entry were held to be invalid duty paying documents. He found that the findings of the adjudicating authority for rejecting part of claim could not be faulted as non production of records or invalid records cannot be termed as procedural lapse as proper records have to be submitted for claiming a rebate/refund which has not been done and this condition being a substantive condition.

3. The learned Counsel for the appellants submits that the Commissioner (Appeals) has traveled beyond the directions given by the Tribunal. In addition it is held further that the appellants have failed to produce proper record which is essential for claiming refund. As a matter of fact, the appellants did not file any refund claim so the question of production of duty paying documents does not arise. It is their further submission that the disputed issue was whether the appellants were entitled to set-off benefit of Notification No. 432/86 or not. This issue was settled by the Tribunal. The Tribunal had given specific direction while passing the order that, "What is described in the test memo is, "a sample of purified Naphthalene" This doubt needs to be resolved by the lower authorities on careful examination of their records and on giving an opportunity to the appellants to inspect the case records and satisfy themselves about what actually sent for test.

In view of the matter, we set aside the impugned orders and refer the case for fresh adjudication to the Assistant Collector, Central Excise with the direction that he would make available copies of test memos and test reports to the appellants. The learned Counsel submits that in view of the above specific direction of the Tribunal, the Commissioner has passed the order on the same ground without going into the details of the case and denied the benefit on entirely new ground that the duty paying documents upon which the appellants have claimed the benefit are invalid duty paying documents. These were never the original grounds under the proceedings initiated by the department. On this ground alone the impugned order may be set aside and the appeal may be allowed. He further

submits that the interest has not been given by the department when the matter was pending since more than 10 years. He submits that the interest may also be granted in this matter to the appellants.

4. In the appeal before me no ground has been taken as to how these documents were valid to substantiate the claim as the finding on them is being invalid is not correct on facts and/or in law. In this view of the matter, the claim of Rs. 5,59,906.50 cannot be upheld as it is not substantiated with valid documents. The plea of procedural lapses and amounts eligible on that account has been already upheld by the lower authorities is not in dispute.

5. As regard the question of interest a perusal of the documents show that interest was one of the grounds taken in the appeal before the Commissioner (Appeals) and the Commissioner (Appeals) had not arrived at any findings on the said claim. The matter is therefore remitted back to the Commissioner (Appeals) to determine the eligibility of interest if any in this case. The appeal is allowed partially in remand to the Commissioner (Appeals) in the above terms.

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