

U.P. State Sugar and Cane Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-29-2007

Reported in : (2007)(117)ECC90

Judge : P Das

Appellant : U.P. State Sugar and Cane

Respondent : Cce

Judgement :

1. The appellants are engaged in the manufacture of V.P. sugar with molasses as its by-product, both falling under Chapter 17 of the Schedule to the Central Excise Tariff Act, 1985. The bagasse and press mud generated during the course of manufacture of sugar exempted from duty were being cleared without payment of duty. By a letter dated 3.10.97, the Superintendent of Central Excise informed the appellant that as per Rule 57CC under the erstwhile Central Excise Rules, 1944, a manufacturer is required to pay an amount of 8% on the value of press-mud and other waste at the time of clearance from their factory.

The appellant reversed the amount of Rs. 15,490/- in their RG23C Part-II account on 14.10.1997 endorsing that payment was made under protest against letter dated 3.10.1997. A proceeding was initiated by way of demand of duty and ultimately by order dated 28.4.2000, the Assistant Commissioner of Central Excise dropped the demand of duty.

The appellant filed a refund claim of Rs. 15,490/- on 7.8.2000 in respect of reversal of the modvat credit vide entry serial No. 25 dated 14.10.97 in RG23C Part-II account, which was rejected as time barred.

2. The learned advocate on behalf of the appellant submits that after clearance of the goods, the Superintendent of Central Excise by letter dated 3.10.1997 directed the appellant to reverse the amount under Rule 57CC of erstwhile Central Excise Rules, 1944. At the insistence of the central excise officers, the appellant reversed the amount in their RG-23C Part-II account under protest and, therefore, the refund cannot be treated as time barred. In this connection, he relied upon the following case laws: Stan Forging Pvt. Ltd. v. CCE, Rajkot 3. The learned D.R. on behalf of the respondent reiterates the findings of the Commissioner (Appeals). He submits that the appellant did not follow the procedure under Rule 233-B of the erstwhile Central Excise Rules, 1944 and, therefore, the refund claim filed after one year is liable to be rejected.

4. After hearing both sides and on perusal of the record, I find that the appellant reversed the amount in their RG-23C Part-II account after clearance of the goods under protest. The dispute was ultimately settled by order dated 28.4.2000 in favour of the appellant. In the case of Empire Plastic Ltd. (Supra), the Tribunal held as under: Further, it is seen that the input invoice were defaced by the Range Superintendent also the appellant was never given any Show Cause Notice regarding non admissibility of Modvat credit. Therefore, credit cannot be denied on the ground that the Modvat credit availed by them was not admissible. As the appellant has reversed the Modvat credit under protest the same should be regularized by issuing a show cause notice for demanding or reversing the wrongly availed Modvat credit; which was not done by the department, therefore, the appellant has entitled; to get the refund of amount reversed by them under protest.

5. I find that the present case is squarely covered by the decision of the Tribunal in the case of Empire Plastic Ltd. (Supra). Accordingly, I allow the appeal and direct the adjudicating authority to grant refund in accordance with law.