

Castrol India Limited Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-31-2007

Reported in : (2007)(116)ECC388

Judge : J Balasundaram, Vice, A T K.K.

Appellant : Castrol India Limited

Respondent : Cce

Judgement :

1. The brief facts of the case are that the appellants are engaged in the manufacture of various types lubricating oils. These lubricating oils are packed in bulk packs of 205 L and 180 kilogram barrels and in retail packs ranging from 50 L to 0.5 L. The appellants have a duty paid warehouse at the premises of their C & F agent M/s. Om Warehousing Pvt.Ltd. where duty paid lubricating oils manufactured by the appellants from its factories were received and stored. They are registered under Rule 174 of the Central Excise Rules, 1944 as a dealer for issuing modvatable invoices to their customers who were eligible to avail modvat credit under Rule 57GG from the premises of M/s. Om Warehousing Pvt. Ltd. However, modvatable invoices are issued in respect of bulk packs of 205 L and 180 Kilogram barrels. No modvatable invoices were issued to their customers in respect of the retell packs ranging 50 L to 0.5 L as such retail customers did not require to take any modvat credit. It is the appellants' contention that CBEC vide its Circular No. 96/7/95-CX dated 13.2.1995 has clarified that a registered person need not enter into the RG-23D register details of those consignments which are

received under Rule 52A invoice or 57G invoices for which he does not propose to issue modvatable invoices. Accordingly the appellants were not entering the stock of retail packs in their RG-23D register and were entering in respect of bulk packs only.

2. On a visit by the Central Excise Officers certain stock of lubricating oils was found to have not been entered in RG-23D register and that there was no corresponding invoice showing payment of duty and batch numbers in these invoices were either missing or batch numbers indicated in invoices were different from the one appearing on the packs. The appellants were accordingly issued a show cause notice alleging that they had not been maintaining RG-23D register as required for all the products and had failed to furnish Central Excise invoices in respect of detained goods covered by batch numbers 3341, 9484, 4121 and 3628 and also in respect of certain stocks where no batch number was appearing. The total duty paid invoices on such stock where the batch numbers did not tally and where no batch numbers appear were valued at Rs. 26.70 lakhs. The show cause notice proposes to confiscate the goods and impose the penalty. The matter was adjudicated by the Assistant Commissioner who upheld the charge of non maintenance of RG-23D register and non duty paid character of the goods seized on which batch numbers either did not appear or was different and accordingly confiscated the goods valued at Rs. 26.70 lakhs with an option to redeem the same on payment of fine of Rs. 26,70,534/- and imposed penalty of Rs. 50,000/- on the C & F Agent. On appeal, the penalty was set aside but redemption fine imposed on the appellants was sustained. It is against this order, the appellants have come up in appeal before us.

3. The Advocate, Shri D.B. Shroff for the appellants, inter alia submits that in this case though the goods were seized on the ground that no duty has been paid, neither show cause notice nor the order of the lower adjudicating authority demands duty and therefore confiscation cannot be sustained on the ground that the goods were not duty paid. The fact that the goods were seized from the duty paid godown shows that the goods were duty paid and could not have been non duty paid. Though the lower authorities have admitted about existence of CBEC Circular giving the appellants the liberty to not to enter the stock for which the

modvatable invoices were not issued in their RG-23D account, both the lower authorities have still chosen to sustain the charge of incorrect maintenance of RG-23D register which is totally incorrect. He also explained the system of assigning the batch numbers on each batch which is of four digits only and stated that batch numbers were very much indicated in the relevant invoices and packs but the Central Excise Officers committed an error in noting down the batch numbers from the invoice and packs. This fact was brought to the notice of the adjudicating authority but they have not given any finding on the same. Some of the goods were imported and therefore could not bear batch numbers. They had submitted the stock transfer memo issued by their Chennai office to M/s. Om Warehousing Pvt. Ltd. showing that these goods were duty paid goods. This has been totally ignored. The discrepancies in noting down the batch numbers were pointed out but the Assistant Commissioner rejected the same on the ground that this was an afterthought and no such explanation was given at the time of drawing the panchnama. In view of this, it was submitted that though the goods were duty paid, they have incorrectly been held to be non duty paid without looking into the evidence furnished by the appellants therefore the same is required to be set aside and the appeal allowed.

4. Heard both sides. We have carefully considered the submissions. We find that the dispute is limited on the point whether the stock in respect of which no batch number was found or on which batch number indicated was found to be incorrect was actually duty paid or not. The appellants have stated that the goods are still lying in their warehouse, the batch numbers are appearing on the invoices and the same can be tallied with those appearing on the products itself and corresponding documents under which they were received. Further where the batch numbers were not appearing the same related to import stock on which no duty was required to be paid and this fact is also supported by accompanying documents. We, however, find that both the lower authorities have failed to give any finding on this aspect which is factual in nature. We, therefore, remand the matter back to the lower adjudicating authority with a direction that joint inspection of the goods along with the corresponding documents like invoices, delivery challans, etc. should be carried out to identify if the batch numbers appearing on the products and invoices are the one and the same and on after such inspection if the department feels that

the same still do not tally, a detailed reasoning should be given for rejecting the appellants' contention. The plea of goods being imported and not chargeable to duty should also be considered. This exercise should be carried out within 3 months of receipt of this order. As the goods are stated to have deteriorated and lying in the warehouse for the last 6 and 7 years, the entire proceedings should be completed within 3 months and the appellant is directed to co-operate in every exercise with the Revenue.

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