

Standard Greases Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-05-2007

Reported in : (2007)(123)ECC54

Judge : T Anjaneyulu

Appellant : Standard Greases

Respondent : Commissioner of Central Excise

Judgement :

1. Heard both sides. The Commissioner (Appeals) Central Excise. Mumbai has upheld the order-in-original and rejected appeal filed by the appellants. Hence this appeal. The appellants are manufacturing 'castrol AP-2 grease, among other lubricating greases, and were clearing them in various pack sized e.g. 180 kg., 25 kg., 20 kg., 5 kg., 3 kg., 2 kg., 1 kg., and 1/2 kg. on payment of appropriate excise duty to the various depots of M/s Castrol India Ltd. as per their dispatch instructions. The appellants' products were covered by the Notification No. 20/99 CE (NT) dated 28.2.1999 and accordingly the provisions of Standards of Weights and Measurements Act, 1976 were made applicable to all such packs which were intended to be sold in the retail trade.

2. Under mistaken belief that the Castrol AP-2 grease packed in 180 kg.

and 25 kg. were not sold in retail trade by Castrol India Ltd., were cleared under Section 4 of Central Excise Act while other packs were cleared under Section 4A

of the Act. Appellants filed an appropriate declaration under Rule 173C under a covering letter dated 9.9.1999 to the office of Range Superintendent in which they have sufficiently disclosed the fact that they are paying duty on 180 kg. and 25 kg.

under Section 4 of the Act and in case of other small packs it is under Section 4A of the said Act. In Jan., 2002, Central Excise Dept.

conducted an EA 2000 audit of the appellants. During the course of audit an anomaly about the non applicability of the provisions of Section 4A to the pack sizes of 25 kg. to the product 'Castrol AP-2 Grease' was pointed out by the said auditors. The appellants made enquiry with M/s Castrol India Ltd. about the same when it was revealed by the appellants that the said product/pack requires to be valued under Section 4A of the Act. Thereafter the appellants worked out the differential duty right from 1.3.99 to till date and debited the same.

Accordingly, the appellants debited Rs. 1,17,067/- in PLA Entry No. 52 dated 11.3.2002 and communicated to the Superintendent of Central Excise (Audit) on the same day by letter dated 11.3.2002. Nearly after two years i.e. on 31.1.2004, the appellants were served with a show cause cum demand notice alleging suppression with an intention to evade excise duty and asking them to show cause as to why differential duty amounting to Rs. 1,17,067/- should not be demanded and recovered from them for the period March, 1999 to 1.3.2002 under Section 11A of the Act and the duty voluntarily paid by them should not be appropriated against them same. It is also proposed to impose penalty under Section 11AC and recovery of interest under Section 11AB of the Act. On adjudication of the show cause notice, demands were confirmed. The said demands were also upheld by the Commissioner (Appeals).

3. It is firstly contended that the penalty imposed on the appellant is not warranted since the differential duty amount was paid even before the issuance of show cause notice. The Commissioner allegedly to have erred in ignoring the provision of Section 11A(2B) of the Act which clearly sets-out that show cause notice should be issued if any short payment of duty is made before service of the said notice. It would be significant to note that the show cause notice seeking to impose penalty on the appellants was issued nearly two years after payment was made.

Therefore, the notice is said to have been wrongly issued despite the provisions of Section 11A(2B) and the demand is barred by limitation. The appellants further relied upon the following decisions.

(i) Hon'ble Supreme Court decision in the case of CCE v. Rashtriya Ispat Nigam Ltd. 2004 (163) ELT A53 (SC) (ii) Hon'ble Bombay High Court decision in the case of CCE v. Gaurav Mercantiles Ltd. .

4. Having considered the various contentions raised by the appellants and the case laws relied upon by them, I am of the view that the authorities below have erred in passing the impugned orders and the same is liable to be set aside. Accordingly, appeal is allowed.

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