

Cce Vs. Flex Chemicals Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-04-2007

Reported in : (2008)(127)ECC109

Judge : S Kang, Vice

Appellant : Cce

Respondent : Flex Chemicals Ltd.

Judgement :

1. Revenue filed this appeal against the impugned order whereby Commissioner (Appeals) set aside demand on the ground that respondent cleared the same goods after remaking under Rule 173-H of Central Excise Rules.

2. The respondents are engaged in the manufacture of polyester chips and cleared certain quantity of chips on payment of duty. Certain quantity of chips was received back from their customer during the period October to December 1998. Thereafter, in the month of January 1999 the returned goods were cleared without payment of duty.

Show-cause notice was issued to the respondent demanding duty in respect of clearances made in January 1999 under Rule 173H of rules on the ground that they had cleared polyester chips of different grade than what was received back and the fresh goods have been removed without payment of duty under guise of received goods.

3. The contention of the Revenue is that as the respondent cleared chips of fibre grade on payment of duty and the same were received back and thereafter cleared chips of film grade which is a different product which is received in the factory. The Revenue also tried to distinguish the decision of the Tribunal in the case of Enfield India Ltd. v. CCE relied upon by the Commissioner 4. The contention of the respondent is that as per the provisions of Rule 173H the manufacturer is permitted for re-made, refined, reconditioned, repaired or subjected to any similar process in respect of duty paid goods received in the factory. In the present case the respondent has done some remaking of the chips resulting in the change of grade. The contention is that chips which emerged as a result of remaking continue to be polyester chips classifiable under the same tariff heading. The contention is that as the goods in question falls within the process provided under Rule 173H, no duty can be demanded at the time of clearance of the same goods without payment of duty. The contention is also that change or upgradation of the goods cannot be taken to be manufactured of new product for the purposes of excise duty.

5. In this case, the admitted facts are that the respondent cleared polyester of fibre grade on payment of duty and the same were received back in the factory, D-3 intimation was also filed by the respondent thereafter some processes were undertaken by the respondents and cleared the chips without payment of duty. The contention of the Revenue is that the second time clearance of chips of film grade, therefore, are not the same chips which were received in the factory. I find that as per the provisions of Rule 173H the manufacturer is permitted for being to remade, refined, reconditioned and repaired or subjected to any similar process in the factory. The process undertaken by the respondent are covered definition under Rule 173H of Central Excise Act.

6. Mere change of grade of the same goods which are classifiable under the same tariff cannot be held that respondent manufactured new distinct item. In these circumstances, I find no infirmity in the impugned order, the appeal is dismissed.