Collector of C. Ex. Vs. D.C.M.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-24-1989

Reported in : (1990)(50)ELT271TriDel

Appellant : Collector of C. Ex.

Respondent : D.C.M.

Advocate for Def. : Shri. P.R. Dastider

Judgement :

1.1 The respondent company filed a refund claim for Rs. 4106.85p with the concerned Assistant Collector on 26-9-1980 for duty paid on cotton fabrics cleared on 17-6-1980. The grounds of the claim were that the company cleared a quantity 19932 sq. meters of cloth after payment of excise duty, this was delivered to M/s. Textile Finishers for raising and then received back in the respondent company's factory for printing. The printed fabric thereafter was cleared on payment of duty. The respondent company submitted D-3 declarations for receiving the duty paid goods for undertaking the process specified in Rule 173-L. The refund claim was, however, rejected by the Assistant Collector on the ground that the condition of processes spelt out in Rule 173-L has not been complied with and therefore, the refund claim was inadmissible inasmuch as a totally new process i.e. of printing was undertaken and it could not be said a process of remaking, refining, reconditioning or subjecting the goods in other similar process. In the opinion of the appellant-Collector as well as the original authority who passed the first adjudication order, the permission could be taken by the respondent company under Rule 56-B or under Rule 96-D. In other words, they could clear the fabrics in the first instance without payment of duty, get the process of raising done outside and then receive the goods printing and the final payment of duty could be made only on the printed fabric without paying the duty on the bleached fabric in the first instance.

1.2 The Collector (Appeals) allowed the refund that duty cannot be charged twice over on the same goods and the refund cannot be denied merely on a procedural lapse.

2. The learned D.R. has reiterated the grounds put forward by the appellant-Collector who has stated that the refund could be granted only in terms of the statutory provisions. Since the respondent company has failed to follow the prescribed statutory provision and the refund claimed by it under Rule 173-L is not admissible because of non-applicability of the said rule, the refund claim is not tenable.

He, therefore, urges that the impugned order be set aside.

3. Learned consultant Shri P.R. Dastider appearing for the respondent, on the other hand, urges that Rule 173-L is squarely applicable to the facts of this case. He urges that remaking means to make again or differently. Therefore, the process of printing undertaken on the fabric is clearly covered by the process 'remaking' mentioned specifically among others in Rule 173-L. He also points out that in any case the respondent company was guided by the Range Officer who advised to claim the refund under Rule 173-L and consequently D-3 forms were duly submitted by the respondent company and which were duly accepted by the Range Officer. The department cannot now at this stage turn and deny the rightful due of the respondent company. He also submits that in any case the department's argument is that the respondent company has not followed a correct procedure. There are any number of decisions of the Tribunal, according to the learned consultant, that a substantive benefit should not be denied to assessee for mere procedural lapse. He invites attention in particular, to a Tribunal's judgment in order No. 371/88-D dated 24-5-1988.

4. I have carefully considered the pleas advanced on both sides. I find that it is the case of the appellant himself that the respondent company could follow a correct procedure either under Rule 56-B or under Rule 96-D. In other words, they were not required to pay duty on the bleached cotton fabric which was initially cleared on payment of duty in the first instance. It is this very duty which has been claimed by the appellant by way of refund. Without going into the merits of question whether the process undertaken by the respondent company is covered under the provisions of Rule 173-L or not, I am inclined to agree with the observation of the learned lower appellate authority that a procedural lapse should not come in the way of the benefit due to an assessee. There are any number of decisions of the Tribunal on this aspect; one such decision is 1987 (29) ELT 275 [Sundram Fasteners Ltd. v. CCE Madurai]. In the result, the appeal is dismissed and the consequential refund be given to the respondent company.