Technova Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-15-1991

Reported in : (1991)LC727Tri(Mum.)bai

Appellant : Technova

Respondent : Collector of C. Ex.

Judgement :

1. All the three appeals are directed against the three orders passed by the Collector of Central Excise (Appeals) confirming the order of the Asstt. Collector rejecting a part of the claim for refund on the ground that there was a non-compliance of the requirement of Rule 233B of the Central Excise Rules.

2. As all the three appeals raise the same issue and are by the same party, they are taken up together for disposal.

3. As the facts as pleaded are not disputed, it is not necessary to go into the same.

4. Heard Shri Parakh for the appellants and Shri Mondal for the Respondents.

5. The only ground on which a part of the refund claim has been rejected is that the appellants did not make any endorsement on the third copies of the Gate Passes I and/or invoices, which was compulsory as contemplated under Clause 4 of Rule 233B of the Central Excise Rules. It is not in dispute that the letter registering protest was duly lodged with the Department much prior to the clearance under the concerned gate passes or invoices. It is also not in dispute

that endorsements of protest were made in GP. I and that only in some stray cases, either third copy of the Gate Pass I was not endorsed or that the endorsement was not made in invoice. Rule 233B lays down the procedure to be followed in cases the duty is paid under protest and among other requirements, insists upon making certain endorsement.

Here, it is found that though all the other requirements have been complied with and the Department has not alleged that the breach of any other condition, the only breach appears to be of not affixing of the stamp on some of the documents. When substantially the provisions of Rule 233B have been complied with, such a lapse of minor nature being insignificant, has to be condoned. I, therefore, hold that the authorities below were not justified in rejecting the claims of refund, which according to them were otherwise tenable, on this minor technicality. I, therefore, set aside all the 3 orders and direct the Department to consider the refund claim for rejected portion of the same, for which the present appeals are filed, as per the law.