

Collector of Central Excise Vs. Kothari General Foods

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Sep-17-1991

Reported in : (1992)(39)LC29Tri(Chennai)

Judge : S Kalyanam, V Gulati

Appellant : Collector of Central Excise

Respondent : Kothari General Foods

Judgement :

1. This appeal is filed by the Collector of Central Excise, Bangalore, and is directed against the order of the Collector of Central Excise (Appeals), Madras, dated 25.8.1989.
2. Shri Vedantham, the learned DR, contended that the refund granted under the impugned order in respect of the duty paid as evidenced by RG. 23A Part II would not come within the mischief and ambit of Rule 57F(3) for the purpose of grant of refund to the respondent, who has exported Instant coffee packed in OTS Cans. The Department assailed the impugned order on this ground.
3. Shri Sashidharan, the learned Counsel for the respondent, submitted that in respect of the grant of refund there is absolutely no difference envisaged under law as to whether the duty liability is discharged either through PLA or RG. 23A Part II and referred to Rule 57F(3) and also to the Notification issued thereunder. He further submitted that it is not disputed by the Department that the respondent

is only an exporting unit and has not cleared any goods for home consumption and also the further fact that refund has been claimed only in respect of the duty paid on the goods which were exported and in terms of Rule 57F(3).

4. We have carefully considered the submissions made before us. The only ground on which the Department seeks to assail the correctness of the findings in the impugned order is on the ground that refund is not grantable in respect of the duty paid by debiting RG. 23A Part II. In the impugned order the Collector (Appeals) referring to the scope of Rule 57F(3) and-also the duty liability discharged either under PLA or under RG. 23A Part II and with reference to the Trade Notice No. 50/89 dated 12.5.1989 of Central Excise, Bombay I, has observed as under: ...There is no dispute that the goods were cleared for export under bond or that the Central Excise duty was paid by the appellants to the supplier of OTS cans. This has been admitted by the lower authority, which is evident from the sanction of a major portion of the refund claim. The only short point that arises from the impugned order is whether the appellant is entitled to rebate of duty paid by suppliers of OTS Cans through RG. 23A Part II or whether it is restricted to only the duty paid by debit in PLA. It is the contention of the appellants that the refund is admissible under Rule 57F(3) of Central Excise Rules, regardless whether the duty is paid by adjustment in RG. 23A Part II or by debit in PLA. In this regard, they rely on Trade Notice No. 50/89 dated 12.5.1989 of Central Excise, Bombay I Collectorate. It is clarified in the said Trade Notice that rebate could be sanctioned in Cash where duties on exported goods were paid through debit in RG. 23A Part II maintained under Modvat Scheme.

When the respondent has been permitted to avail the MODVAT credit and when refund is sought for in terms of Rule 57F(3) read with Notification issued thereunder, the same cannot be denied on the ground that the same should be restricted only in respect of duty paid by debit in PLA. We do not find any warrant for such a construction in Rule 57F(3) nor in the Notification issued thereunder. We, therefore, do not find any merit in the appeal and the same is therefore, dismissed.

(V.P. Gulati) Sd- (S. Kalyanam) Member Member 16.9.1991 5. Per Shri V.P. Gulati. The learned appellant-Collector is aggrieved against the order of the Collector (Appeals) under which the learned Collector (Appeals) has allowed the respondent's plea for grant of refund under Rule 57F(3) relying upon the Trade Notice issued by the Bombay Collectorate for that portion of the claim in respect of which the duty was paid by debit to RG. 23A Part II by the supplier of the Cans to the respondents. In the grounds of appeal the learned appellant-Collector has urged as under: In the instant case, the respondents are receiving inputs (OTS Cans) from suppliers who are working under DEEC scheme. They are getting Tin plates without payment of import duty and countervailing duty.

The quantity of tin plates used in the manufacture of OTS Cans and supplied to the respondents are replenished under DEEC Scheme, even when OTS Cans are manufactured out of duty paid tin plates. The suppliers of OTS Cans are also availing Modvat credit in respect of indigenous tin plates and duty paid imported tin plates. Such credits are utilised by the supplier of OTS Cans to clear the goods to the respondents. Under DEEC Scheme the quantity of tin plates utilised in the manufacture of such OTS Cans is also replenished. It is not expected of a unit availing DEEC scheme to pay duty on finished goods. If refund is considered in respect of OTS Cans, it will amount to encashing the credit in respect of the quantity which has been replenished without payment of duty under DEEC Scheme, thereby confirms double benefit and the government revenue will be lost to that extent.

It is observed that the original authority allowed the refund to the respondent For major portion of the claim under Rule 57F(3) and denied the benefit only in respect of that amount which was paid as duty by the suppliers of OTS Cans to the respondent through their RG. 23A Part II register. The plea of the appellant-Collector is that the suppliers of the Cans were functioning under DEEC Scheme under which they were under obligation to export the Cans manufactured out of the duty free material imported and since the Cans exported had to be related to the duty free material imported for the purpose, the question of any credit in RG. 23A Part II being taken in regard to the same would not arise and the question of paying any refund also would not be there. The fact, however, remains that the

manufacturer of the Cans who supplied the Cans to the respondent was using both duty paid and non-duty paid material for the manufacture of Cans and had paid duty out of the KG.23A Part II credit taken in respect of the duly paid material obtained by him for the purpose of clearance of the Cans. If at all there is any objection to be taken in regard to the payment of duty out of RG. 23A Part II credit it should have been in the case of the manufacturer who supplied the Cans. The Department does not seem to be aggrieved of the utilisation of the credit by the supplier of the Cans. The goods, which came in the hands of the respondent, admittedly had discharged the full duty liability and in the hands of the respondent therefore, the goods have to be reckoned like any other goods in respect of which duty burden has been discharged. The credit taken in the KG. 23A Part II by the respondent cannot be treated in any way different from the credit taken in respect of any other goods which have suffered duty and the provisions of refund etc. under the MODVAT Scheme will apply as would apply in any other case. Just because the goods were manufactured by an assessee working under DEEC Scheme it does not make any difference so far as the goods in the hands of the respondent are concerned. As mentioned earlier, if any objection has to be taken it has to be against the taking of the MODVAT credit and utilisation of the same for the manufacture of the Cans under the DEEC Scheme by the manufacturer of the Cans. The learned appellant-Collector has not set out in the grounds of appeal nor any plea has been made before us as to how under Rule- 57F(3) the respondent is disentitled to the benefit as allowed by the learned lower appellate authority. In view of the above, I hold that there is no merit in the plea of the Revenue and the appeal is, therefore, dismissed.

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