

Paper and Pulp Conversions Ltd. Vs. Collector of C.Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-30-1991

Reported in : (1995)(77)ELT390Tri(Mum.)bai

Appellant : Paper and Pulp Conversions Ltd.

Respondent : Collector of C.Ex.

Judgement :

1. All the three appeals are directed against the same order bearing No. AMP-555 to 557/B III-304 to 306/88, dated 10-10-1988 passed by the Collector of Central Excise (Appeals), Bombay, rejecting the appellants' appeal.

2. The facts of the case are that the appellants preferred three refund claims (i) covering the period from 8-1-1986 to 31-1-1986, (ii) 1-2-1986 to 28-2-1986 and (iii) from 1-3-1986 to 31-3-1986. The undisputed factual position is that in all the three cases the refund claims have been filed after six months from the date of payment of duty. All the same, it was contended by the appellants that the duty payments have been made under protest vide their letter dated 3-12-1985, addressed to the Supdt. and acknowledged by the Range Office. However, the authority below held that this letter of protest addressed to the Supdt. and filed in the Range Office is not a valid letter of protest filed before the proper officer as laid down under Rule 233B of the Central Excise Rules and even at the time of filing the revised classification list claiming the benefit of exemption under Notification No. 25/84, they did not indicate before the Assistant Collector that the duty was paid under protest and hence the refund claims were rejected and in appeals the orders of the

Assistant Collector were upheld by the Collector (Appeals) by a common order. The present appeals are against the aforesaid order.

3. During the hearing, none represented the appellants. There is a request from them to decide their appeals on the basis of the contents in the appeal memos without their presence.

4. Heard Ms. Lipika Majumdar Roy Choudhury, the Ld. SDR. She contended that though the gate passes are endorsed with the words "under protest" and there is a letter dated 31-12-1985 addressed to the Superintendent, this letter has not been filed before the proper officer and the proper officer for receiving the letter of protest and issuing acknowledgement is the Assistant Collector and in this case the letter dated 31-12-1985 has been filed before the Superintendent and acknowledged by the Inspector in the office of the Range and hence the mandatory provision of Rule 233B is not complied with. Hence, refund claims are not saved by the limitation. Therefore, the lower authorities were justified in rejecting the claims as time barred.

5. After taking into account the submissions made in the appeal memos, we find the letter dated 31-12-1985 addressed to the Superintendent and filed before the Range Office was received by the Inspector on the same day. The appellants in the said letter have indicated that they are enclosing the revised classification list seeking benefit of exemption under Notification No. 25/84 dated 1-3-1984 as applicable with effect from 1-4-1985. They had also indicated that they will continue to pay the existing rate of duty under Notn. No. 26/84, dated 1-3-1984 under protest as provided under Rule 233B of the Rules, unless and until the benefit of exemption under Notification No. 25/84, dated 1-3-1984 is granted to them. From the wording of this letter, it is clear that they have filed the revised classification list and till the revised classification list is approved and benefit is given, they are paying the duty under protest in terms of Rule 233B of the Central Excise Rules. Now the point of dispute is that this letter has been filed in the Range Office before the Superintendent and hence objection has been taken by the Ld. SDR that it has not been filed before the proper officer, namely the Asstt. Collector. It is not disputed before us that the revised classification list was filed

and it was approved effective from 8-1-1986 by the Asstt. Collector. Viewed in this context of the factual position, it is apparent that the Asstt. Collector was aware of their claim for exemption under Notification No. 25/84, dated 1-3-1984 and also considered the revised classification list seeking the benefit of this exemption. The letter dated 31-12-1985 is to be viewed in this context. In the circumstances, we find the observation of the Collector (Appeals) that the bonafide of the appellants in filing the letter of protest before the Supdt. is open to doubt, is not supported by factual position as indicated above.

6. Filing of the letter of protest before the Superintendent simultaneously with the filing of the revised classification list, which was approved by the Assistant Collector has to be construed as substantial compliance of the requirement for the purposes of Rule 233B. Even factual position does not indicate that the letter of protest was manipulated subsequently to get the benefit of saving of limitation. In the circumstances, we are of the view that the lower authorities were not justified in dismissing the letter of protest as not saving the limitation. We, therefore, set aside the orders of the authorities below but remand the case back to the Assistant Collector for consideration of their claims on merits and pass orders in accordance with the law.

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