

Mahindra and Mahindra Ltd. Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-23-1991

Reported in : (1993)LC688Tri(Mum.)bai

Appellant : Mahindra and Mahindra Ltd.

Respondent : Collector of C. Ex.

Judgement :

1. This appeal is directed against the Order-in-Appeal bearing No.N-142/B-II-88/87 dated 10-6-1987 passed by the Collector of Central Excise (Appeals), Bombay, against the order of Assistant Collector one dated 1-10-1986, rejecting permission to the appellants, for destruction of refuse of excisable goods received under Rule 192 of the Central Excise Rules and the other one dated 16-12-1986 permitting them to destroy the refuse of excisable goods on payment of duty.

2. The appellants, manufacturers of tractors and parts thereof had been availing the facility of Chapter X Procedure extended vide Notification issued in respect of parts received by them for O.E. use. Some of the parts received vide Rule 192 however were "refused" and the appellants were entitled to destroy them by following the procedure of Rule 195.

In the year 1971, an issue however arose as to whether such refuse could be disposed of under Rule 195 with or without payment of duty and after a protracted correspondence, however, the refuse was disposed of on payment of duty, but refund thereof was claimed, and though the refund claim was rejected by the Asst.

Collector, the Collector (Appeals) vide his order dated 10-4-1978 sanctioned the refund.

Thereafter periodically the permissions for destruction without payment of duty, of the refuse of the excisable goods, were being sought, and two such applications dated 10-12-1985 were filed. The department, however, vide their letter dated 17-12-1985 raised the dispute in relation thereto, over again and hence the matter was taken before the Grievance Committee of Bombay-II Collectorate, when it was agreed to grant permission for destruction without payment of duty on the appellants furnishing bank guarantee and an undertaking to pay the duty if the same became payable. However, thereafter also no permission was given and on repeated reminders, they were directed to contact jurisdictional Asst. Collector, and the said Asst. Collector vide his letter/order dated 1-10-1986 refused the permission by referring to Rules 195 and 196B as amended by Rule 173P of Central Excise Rules, and holding that vide Rule 196B, the goods, which were found defective or damaged at "the time of receipt" could be dealt with under the said provision, but if the goods got damaged in the process of manufacture, the same would not qualify for other benefit given under the said rule, as goods at the time of receipt were in good condition and directed the appellants to clear the goods on payment of duty. The appellants, vide their letter dated 9-12-1986 informed the Assistant Collector that the goods had to be destroyed and there was no question of clearing them on payment of duty and the Assistant Collector vide the letter/order dated 16-12-1986, permitted destruction on payment of duty thereon. The appellants, thereupon, preferred appeal before the Collector (Appeals), who, virtually reiterated the observation by the Assistant Collector and endorsed the same and rejected the appeal.

3. Heard Shri P. Sreedharan, for the appellants and Mrs. Lipika Majumdar, the Ld. SDR, for the Department.

4. Initially Shri Sreedharan submitted that, as per the impugned orders, their duty liability was to the extent of Rs. 45,203.48.

However, subsequently vide order of Asst. Collector dated 31-5-1988 destruction of refuse of goods obtained under Chapter X Procedure had been permitted on

execution of the bank guarantee, and therefore the dispute was now only limited to the duty liability of Rs. 12,530/-. It however appears that the bank guarantee is got executed, pending the determination of duty liability, and the duty liability has to be determined in relation to the goods.

5. The appellants, receiving the goods under Chapter X Procedure, would stand governed by the provisions of Rule 195 and Rule 196B as modified vide Rule 173P of the Central Excise Rules.

6. Rule 195 is of a general nature, and permits disposal of refuse of all excisable goods that may remain after completion of industrial process, whereas Rule 196B deals with the goods found damaged or defective on the receipt. Reading the order of both the authorities below, they seem to have concentrated only on Rule 196B, and has not considered the case vide Rule 195. If, according to the presumption of the authorities below, the goods for which destruction is sought might have been damaged during the process, then the case ought to be considered vide Rule 195, and otherwise, Rule 196B would stand attracted. The narrower meaning to the word "on receipt" as used in Rule 196B attempted to be given, does not stand to reasoning as, vide CEGAT decision reported in 1985 (21) E.L.T. 753. *M/s. Tractors & Farm Equipments Ltd. v. Collector of Central Excise, Madras*, the same has to be interpreted in more realistic way. The appellants have produced the copy of the letter dated 10-12-1985 seeking permission to destroy which is now sought to be pursued and going through the same, it appears that goods for which permission is sought are all defective or damaged goods. Even the authorities below have not doubted that claim, and have merely rejected the permission, as they were not declared as such "on receipt". As mentioned earlier, if they felt the goods to have been damaged during manufacturing process, permission ought to have been granted vide Rule 195.

7. The appellants have brought on record the evidence that in the earlier proceedings, the same issue was raised, and ultimately the department had, under the direction from Collector (Appeals), to refund the duty charged. There is no denial to this fact from the Department.

8. When the provisions of Rule 195 and Rule 196B are clear, denial of permission, and demand of duty do not appear justified and the direction to that effect cannot be sustained and are set aside.

9. In the result, the appeal is allowed. Impugned order is set aside.

The appellants be permitted to destroy the goods without charging of the duty.

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