

Unique Pharmaceutical Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-31-1994

Reported in : (1994)(74)ELT925Tri(Mum.)bai

Appellant : Unique Pharmaceutical

Respondent : Collector of C. Ex.

Judgement :

1. There is a delay involved in filing the appeal which is mainly on account of the fact that the appellant construing the issue to be a denial of the export rebate wrongly filed the Revision Application before the Govt. of India. In the Revisionary authorities' order dt 18-1-1984 it is observed that this is a case of refund of Modvat credit and hence should be dealt with by the Tribunal. On getting this order on 31-1-1994, they filed the appeal on 23-2-1994. He therefore pleaded that since they were pursuing the remedy in a wrong forum by a mistake in construction and the moment they came to know about this position, they have filed the appeal within a reasonable period and hence the delay should be condoned. In view of the aforesaid explanation, I condone the delay and thereafter proceeded to hear the appeal.

2. The appeal is against the Order-in-Appeal No. PCJ/56/94-B-III, dt.

28-5-1993 denying the refund of Modvat credit accumulated on account of the export of the final product to the extent of Rs. 11,153.85. This amount was allowed by Asstt. Collector by way of refund. However, the deptt. went in appeal before the

Collector (Appeals) who in the aforesaid order accepted the depts.'s appeal and disallowed the refund of the aforesaid amount. The main reason for filing the Depts.'s appeal before the Collector (A) is that the goods were allowed for export under AR 4 dt. 5-9-1989, but they were actually shipped on 21-10-1989 i.e. in the next quarter namely October 1989 to December 1989 and hence the refund could not have been claimed in the previous quarter, in view of the provisions of Notification No. 85/87 issued under Rule 57F(3) of the Central Excise Rules.

3. After hearing both the sides, though technically and legally the claim should have been made in the next quarter as per the provisions of the aforesaid Notification, the fact that the goods removed for export under AR 4 dated 5-9-1989 have been exported is not disputed. In the circumstances, the aforesaid amount of refund in any case is eligible to them in the next quarter. In view of this, this procedural irregularity can always be rectified by filing a claim in the next quarter. I therefore allow the appeal with directions not to recover the refund of Rs. 11,153.85 already sanctioned by the Assistant Collector.

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