

Modi Rubber Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-14-1994

Reported in : (1994)(73)ELT129TriDel

Appellant : Modi Rubber Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The above appeal pertains to admissibility of set off of countervailing duty paid by the appellants on imported rubber accelerators.

2. The appellants are engaged in the manufacture of tyres, tubes and flaps falling under Tariff Item 16 of the Schedule to the erstwhile Central Excise Tariff and were availing proforma credit/set off of countervailing duty paid on imported raw materials used in the manufacture of the final products in terms of Rule 56-A of the Central Excise Rules, 1944. The appellants received two consignments of Vulkacit-MBTS (Rubber Accelerators) from M/s. Sun Export Corporation, Bombay on 3-4-1985 and 8-7-1985 which were sold to the appellants on High Seas Sale basis. D-3 Intimation No. 474 dated 3-4-1985 and No. 602 dated 8-7-1985 were filed by the appellants for the material. Vide letter dated 26-7-1986, the appellants forwarded the relevant documents viz. Bills of entry, Bill of lading, invoice and Clearing agent's bill etc. stating that Proforma credit could not be availed earlier as the Duty Paying documents were misplaced by the transporter during transit of the materials. They requested for condonation of delay in submitting the duty paying documents and allowing credit on duty paid material in their RG-23A Part II. The

appellants, were directed to submit all the relevant documents in original and under cover of letter dated 13-11-1986, the appellants submitted the following documents to the Assistant Collector - (a) Triplicate copies of bills of entry for ex-bond clearance for home consumption dated 8-4-1985 and 8-7-1985; (b) Invoice of M/s. Sun Export Corporation, Bombay dated 14-1-1985 towards sale of material in favour of appellants by transfer of documents; (c) Clearing Agent's bill dated 15-3-1985 in favour of the appellants. Regarding the Bill of lading No. 304 dated 25-11-1985, the appellants stated that the original was not available as it was submitted by M/s. Sun Export Corp. to the Shipping Agency.

The appellants requested the Assistant Collector to allow credit of duty paid on the material on the basis of Trade Notice No. 208/84 dated 13-12-1984 issued by the Meerut Collectorate which provided that application for extension of time for submission of duty paying documents beyond 3 months, in exceptional cases, will be referred to the Asstt. Collector by the Range Superintendent.

3. The Assistant Collector rejected the appellants' request on the ground inter alia that the duty paying documents were not submitted within one month of D-3 intimation but were only submitted after a delay of 18 months and the bill of entry relates to M/s. Sun Export Corporation which was retransferred from M/s. Dunlop India Limited and was not retransferred in favour of the appellants. The lower Appellate authority rejected the appeal on the ground that the appellants had failed to comply with the statutory requirements of law and therefore, delay could not be condoned. Hence this appeal.

4. Shri V. Sridharan, learned Advocate for the appellants, contends that under the provisions of Rule 56A, credit of duty paid on inputs is permitted on production of the original duty paying-documents covering the materials and no time-limit is prescribed therein for the same. The appellants had produced all the relevant documents evidencing transfer of the imported materials to them on High Seas Sale basis and the bill of lading was also endorsed in favour of the appellants by M/s. Sun Export Corporation. The delay in submitting duty paying documents was due to mis-placement of documents by the transporter and this is a ground on which delay could be condoned as the case was of an exceptional nature. He

submits that there is no dispute with regard to receipt and utilisation of the material covered under the said Bill of entry as proper D-3 intimation was submitted to the Department immediately on receipt of the imported goods and the receipt of the material was verified. He therefore, submits that the benefit available to the appellants in terms of Notification No. 95/83-C.E., dated 1-3-1983 as amended, should not be denied to the appellants solely on the ground of delay.

5. Ld. DR Shri V.C. Bhartiya submitted that the documents on record cannot be correlated in several cases, for example, while the D-3 intimations at pages 8 and 9 of the Paper Book indicate the Bill of Entry No. as 81/88, the appellants, in their letter dated 26-7-1986 to the Asstt. Collector have mentioned Bill of Entry Nos. as 4445 dated 18-4-1985 and 1123 dated 3-7-1985. He has also submitted that since the delay is of more than 18 months and the Trade Notice of Meerut Collectorate allows only a period of 3 months, delay cannot be condoned. He also relies upon the judgment of the Hon'ble Gujarat High Court in the case of Wipro Ltd. v. UOI, reported in 1992 (60) E.L.T 370 (Guj.) in support of his contention that the limitation provided in Section 11B, CESA, 1944 would be attracted and hence, the claim of the appellants is time barred. In Rejoinder, Id. counsel relies upon the judgment of the Tribunal in the case of Kothari Chemical & Industries v. CCE 1989 (44) E.L.T. 560 which according to him is applicable to the facts of this case.

6. On considering the submissions of both sides and perusing the records, we find that the basic objection of the Department is that duty paying documents have been submitted after about 18 months while as per the Trade Notice dated 3-12-1984 of the Meerut Collectorate, the documents should have been submitted within a period of three months.

There is no dispute that the D-3 intimations dated 30-4-1985 and dated 8-7-1985 have been filed within the stipulated time. This is also borne out from the letter dated 18-11-1985 of the Superintendent to the effect that D-3 intimations as per the list enclosed have been filed but duty paying documents have not been submitted. Admittedly, the appellants have submitted photocopies of duty paying documents Para 13, triplicate copies of the Bill of Entry only under cover of the letter dated 26-7-1986 and the original of the triplicate by letter dated 30-9-1986.

The relevant portion of the Trade Notice relied on by the Department reads as under :- "The issue relating to production of documents evidencing payment of duty with the D-3 intimations has been examined and it has been decided that documents evidencing payment of duty should be produced within a period of one month of the filing of D-3 intimations. This period may on sufficient cause being shown to the Supdt. of Central Excise be extended to three months. In case of exceptional circumstances, the Supdt. may refer the matter to the Asstt.

Collector extension beyond the three months period. The documents referred above are the original duty-paying or certificates or subsidiary gate passes issued or documents obtained when the original duty paying documents get lost or misplaced.

It should, however, be noted that notwithstanding the fact that documents evidencing payment of duty of excise have not been received, the proper Central Excise Officer shall nonetheless verify the goods on receipt of the D-3 intimation. Such verifications shall also be done in respect of cases where the D-3 intimation regarding the documents evidencing payment of duty of excise. After such verification, the assessee may be permitted to utilise the goods but credit of duty paid on the goods would be permitted to be utilised only as and when the documents evidencing the payment of duty of excise are produced to the satisfaction of the proper officer." 7. In the present case, the appellants have not taken credit on their own nor have they utilised it but have sought permission from the authorities by their letter dated 26-7-1986. A somewhat similar situation was considered by the Tribunal in the case of Hyderabad Allwyn Ltd. v. CCE 1984 (18) E.L.T. 417 -In that case the assessee had submitted the necessary intimation in prescribed D-3 Form within time but the documents evidencing payment of duty like Gate Pass of subsidiary Gate Pass/certificate were not available at the time of receipt of the goods or the intimation regarding their arrival but were produced much later. The claims for availing proforma credit were rejected by the Asstt. Collector on the ground that duty paying documents as required under Clause (b) of Rule 56A(3)(i) were not produced at the time of D-3 declaration. The Collector (Appeals) confirmed the view of the Asstt. Collector. The assessee contended before the Tribunal that the various Trade Notices issued by the Collectorate itself

indicate that filing of Gate Pass or certificate together with the D-3 intimation is not always necessary. In para 8 of its judgment the Tribunal has held as under: It is admitted that at the time of receipt of the steel sheets in the factory of the appellant, intimation regarding their arrival had been given; the goods seen and the D-3 duly endorsed about the identity of the goods having been verified. We do not quite follow how in the absence of gate pass identity was taken to be established; but at this stage of the proceedings the fact of verification is not open to challenge. Rule 56A(3)(i)(b) does provide the relevant pass has to accompany the raw material. The claim that this provision is mandatory is belied by the existence of two trade notices - one each of the Hyderabad and Madras Collectorates. These notices specifically provide that the goods can be brought under the cover of an invoice and the duty paying documents such as gate pass or certificate, can be submitted within 15 days or one month from the date of arrival of the goods in the factory. This itself would show that the requirement regarding production of gate pass is procedural in nature. If identity of the goods could be established - without the gate pass or the certificate of payment of duty, the presentation of such a document at a later date does not in any way affect the minimum checks necessary for the purposes of Rule 56A. Though, therefore, in this case, the delaying the submission of the relevant documents is somewhat long, viewed in the context of the period of 15 days or one month set out in the trade notices and the actual verification of the goods received by the appellants and acceptance of identity, we would hold that the provision of Rule 56A have been observed in respect of the consignments. Accordingly, we allow the appeals with consequential relief".

Ld. DR's arguments that in the above case the delay was only to the extent of 15 days which was condoned by the Tribunal does not seem to be correct as the 15 days referred to in the judgment is the period of delay being condoned by the trade notice.

8. The judgment of the Hon'ble Gujarat High Court in the case of Wipro Ltd. is distinguishable. The High Court dealt with the case of money credit under Rule 57K and Notification 27/87 issued thereunder. The condition of the notification has been set out in para 2 of the judgment itself. The first condition is that credit shall

be taken only in respect of the quantity of oil subject to hydrogenisation on or after 1-3-1987 and that credit shall be taken only on the hydrogenated oil so spent. The second condition stipulates that the credit taken during any calendar month would be utilised for payment of duty on the final product only after the commencement of the succeeding month. It would, thus, be seen that, in the Money Credit Scheme, the notification itself imposes the condition that credit shall be taken only on the date on which oil has been hydrogenated and that credit shall be utilised after the commencement of the next calendar month. In the present case, the appellants have staked their claim for the benefit of proforma credit within time by filing the D-3 intimations. This is over and above the general permission already obtained under Rule 56A(2).

Therefore, the subsequent delay in filing the duty paying documents cannot operate against the appellants. In the case of *Kothari Chemicals & Industries v. CCE 1989 (44) E.L.T. 560*, the Tribunal has held as follows :- "We observe that the appellants had placed all the facts regarding their manufacture before the Central Excise authorities and repeatedly requested for permission for availing of facility under Rule 56A. The Collector (Appeals) had even held that they were eligible for consideration of the said facility. It is seen that the appellants wanted to avail of concession under 56A as they were repeatedly asking for the permission for availing the credit of the duty paid on the sludge. Unless the permission as required in terms of the conditions of Rule 56A was given by the concerned Asstt.

Collector the appellants could not have availed of the benefit of proforma credit available under Rule 56A. Since the permission was not forthcoming, the appellants went on paying duty. They have also stated that they sent the necessary intimation as required under Rule 56A in proper D-3 form and maintained the required RG-23 Account. They however did not avail of the credit entered in the RG-23 Register as the desired permission had not been received by them. In this background, therefore, it has to be held that since the appellants had applied for the benefit under Rule 56A any payment made by them could not be taken as final payment and it could only be considered as subject to the outcome of their plea for permission under Rule 56A." 9. In view of this position, since admittedly, the appellants filed the D-3 intimations within time, it cannot be held

that the subsequent delay in filing the duty paying documents renders their claim time barred in terms of Section 11B CESA, 1944. We, therefore, hold that the appellants' claim for set off of countervailing duty is not barred by limitation. However, in view of the submission of the Id. DR that the documents cannot be correlated, the factual aspect of verification is to be carried out by the Asstt. Collector to whom the matter is remanded for that purpose. In the result, we set aside the impugned order holding that the scheme of the appellants is not hit by limitation and remand the matter to the Asstt. Collector for verification of the duty paying documents already submitted by the appellants.

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