Sabari Starch Vs. Collector of Central Excise

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Court : Chennai

Decided On : Nov-15-1991

Reported in : 1993(41)ECC90; 1995LC216(Madras); 1992(58)ELT531(Mad)

Judge : Kanakaraj, J.

Acts : Customs Act, 1962 - Sections 130; Central Excise Rules, 1944 - Rules 12, 173H, 173L and (1); Central Excise Act, 1944 - Sections 35C(2)

Appeal No. : Writ Petition No. 8643 of 1983

Appellant : Sabari Starch

Respondent : Collector of Central Excise

Advocate for Def. : Shri K. Jayachandran, Addl. Central Govt. Standing Counsel

Advocate for Pet/Ap. : Shri K. Subramaniam, Adv.

Judgement :
ORDER

1. The petitioner is the proprietor of a factory engaged in the manufacture of starch falling under Item 15C of the Central Excise Tariff. In the year 1979 he had received an export order from Sri Lanka for the export of 50 metric tonnes of treated maize starch. For the purpose of fulfilling export order the petitioner had to purchase starch from M/s. Lakshmi Starch Limited, Hyderabad and had to

reprocess the same with some chemicals in his factory before the goods became fit for export. The starch purchased from the Hyderabad factory had been subjected to excise duty before they were purchased by the petitioner. After processing the goods in his factory of Pondicherry the petitioner exported 50 Metric Tonnes of processed maize starch to Sri Lanka on 21-6-1979 and 22-6-1979. On 18-10-1979 the petitioner filed a Rebate claim in Form-C under Rule 12 of the Central Excise Rules (hereinafter referred to as the Rules) claiming a sum of Rs. 13,125/- on the ground that the goods had been exported and therefore they are entitled to refund of the excise duty paid on the goods. It is stated that the Assistant Collector, Central Excise, Pondicherry advised the petitioner to prefer the claim under Rule 173L of the Rules. On the petitioner making the claim under Rule 173L alongwith a letter of no objection from M/s. Lakshmi Starch Limited, Hyderabad the Assistant Collector ordered refund of sum of Rs. 12,681.37. This order was made in or about 16-10-1981.

2. The Collector of Central Excise (first respondent) issued a notice on 30-3-1982 calling upon the petitioner to show cause why the order of refund should not be cancelled. The petitioner submitted his explanation on 15-4-1982. By an order dated 19-11-1982 the first respondent held that neither Rule 12 nor Rule 173L of the Rules would be applicable to the petitioner and accordingly set aside the refund order. The petitioner thereupon filed an appeal with the second respondent which was dismissed on 11-5-1983. A Review Application under Section 35C(2) of the Act was also dismissed on 4-8-1983. The writ petition is to quash the order dated 11-5-1983 and to pass such further orders as may be necessary.

3. Though no counter-affidavit has been filed, Mr. Jayachandran for the respondents seeks to support the order of the respondents on the basis of the relevant Rules.

4. The question really is whether on the facts and circumstances of the case the petitioner is eligible for refund of excise duty paid by M/s. Lakshmi Starch Limited, Hyderabad, either under Rule 12 or Rule 173L of the Rules. In the order dated 19-11-1982 made by the first respondent, cancelling the earlier order of refund made by the Assistant Collector, it is pointed out that Rule 173L will not apply because

the goods processed at the petitioner's factory at Pondicherry did not attract any duty liability. Therefore Rule 173L will have no application. Secondly it is stated that refund of duty under Rule 173L can be made only to the manufacturer who had actually paid the duty, which in this case is M/s. Lakshmi Starch Limited, Hyderabad. The second respondent on appeal, adds yet another reason for denying the relief sought for by the petitioner. According to the Tribunal the 'Return' contemplated under Rule 173L should mean only a return to the very same manufacturer, even though it may be, to the same factory or any other factory.

5. Mr. K. V. Subramaniam for the petitioner argues that there is no requirement in Rule 173L that refund should be paid only to the manufacturer who had paid the duty. Similarly it is contended that there is no requirement that the process undertaken in the petitioner's factory at Pondicherry should again attract excise duty. He also relies on the fact that the petitioner had filed D.3 intimation and had observed the formalities required under Rule 173H of the Rules and therefore it follows that the assessee is entitled for refund under Rule 173L of the Rules.

6. Rule 173H of the Rules enables an assessee to retain in or bring into, his factory or warehouse the goods on which duty has been paid if such goods need to be remade, refined, reconditioned, repaired or subjected to any similar process in the factory. The first paragraph of Rule 173L(1) is as follows :-

'The Collector may grant refund of the duty paid on manufactured excisable goods issued for some consumption from a factory, which are returned to the same or any other factory for being re-made, refined, reconditioned or subjected to any other similar process in the factory :'

The other conditions to be specified under Rule 173L need not be noticed by me for the purpose of this case. I find from Rule 173L of the Rules that there is no condition that the refund should be ordered only to the manufacturer who had originally paid the excise duty. All that the Rule says is that the Collector may grant refund of the duty paid on manufactured excisable goods which are returned to the same or any other factory for being refined etc. Applying the Rules to the facts of this case the goods purchased by the petitioners had suffered excise duty in the hands of M/s. Lakshmi Starch Limited, Hyderabad. The said duty paid goods had been returned to the petitioner's factory for being refined. Mr. Subramaniam is therefore right in saying that the requirements of Rule 173L to that extent are satisfied. But a conjoint reading of Rule 173H and Rule 173L of the Rules shows that the refund is contemplated only when the goods so refined after being returned to the factory is subject to a excise levy after being so refined. This conclusion is inescapable because Rule 173H when it enables the assessee to bring into his factory duty paid goods for refinement etc., permits the assessee to remove the goods from his factory without payment of further duty. Therefore it follows if in the process of such refinement, any manufacturing activity is involved the goods once again attract payment of duty. It is in such cases that Rule 173L comes into play and enables the assessee to get refund of the duty originally paid before such refinement etc. It cannot be disputed that starch manufactured by M/s. Lakshmi Starch Limited, Hyderabad and the petitioner do fall under Item 15-C of the Central Excise Tariff. Therefore the goods are liable to be taxed either at Hyderabad or at Pondicherry. If the petitioner is allowed to get refund of the excise duty paid at Hyderabad, then it would mean that the goods do not suffer tax at all. In this connection it is admitted by the petitioner that the process undertaken in his factory at Pondicherry did not amount to manufacture and therefore the goods were eligible to be cleared from his factory without payment of duty. He has categorically stated that after refining the starch for export purpose they were cleared from his factory on 'NIL' duty gate passes. Therefore the question of refund does not at all arise because the goods had suffered duty only once. Therefore I have no hesitation in holding that the petitioner will not be entitled to get refund under Rule 173L.

7. The alternative contention that the petitioner is entitled to get refund under Rule 12 of the Rules may now be considered. Rule 12 provides for Rebate of duty paid on excisable goods, if exported outside India, subject to the conditions and limitations prescribed by the Central Government in a Notification. To claim benefit under Rule 12 of the Rules, the petitioner must refer to a particular notification entitling him to get refund of duty paid on goods which are exported outside India. Such a notification will contain the extent to which refund is permitted, the safeguards, conditions and limitations and other allied matters which may be

specified in the notification. Unless the petitioner is able to say that there is a notification enabling him to get a refund and also prove that he has satisfied the conditions specified in the notification, Rule 12 will not come into play. In fact in the order dated 19-11-1982 it has been pointed out that for claiming Rebate under Rule 12 the goods should be exported in the original packing under which the goods were cleared without involving the goods to any further process of the manufacture. In this case admittedly excise duty was paid only by M/s. Lakshmi Starch Limited, Hyderabad and admittedly those goods were not exported. The petitioner had brought those goods into his factory for further refinement and treatment and exported the goods only thereafter. Admittedly the petitioner had not pad excise duty at the time of clearance from his factory on the ground that there was no manufacturing process involved in the refinement process. There is no difficulty in concluding that the petitioner cannot claim refund under Rule 12 of the Rules.

8. Learned counsel for the petitioner however cites certain authorities in support of his contention. The following authorities are referred to :-

(1) Union of India v. Ahmedabad Manufacturing 1984 (17) E.L.T. 246.

(2) Indian Aluminium Co. Ltd. v. Union of India : 1988(36)ELT435(Cal) This decision in fact refers to the requirement of notification under Rule 12 of the Rules.

(3) Anup Engineering Ltd. v. Collector .

Except the observation in Indian Aluminium Co. Ltd. v. Union of India : 1988(36)ELT435(Cal) noticed by me none of the authorities above cited come to the aid of the petitioner in the interpretation of Rule 173L or Rule 12 of the Rules. Mr. Jayachandran for the Revenue sought to contend that against the order of the Tribunal, the only remedy of the petitioner is to seek a reference under Section 130 of the Customs Act. I am not inclined to dismiss the writ petition on the ground of availability of alternative remedy because the writ petition has been pending in this court from the year 1983.

9. For what I have stated above relating to the applicability of Rule 173L and Rule 12 of the Rules I hold that the petitioner cannot get any relief in this writ petition. The writ petition therefore fails and is dismissed. However, there will be no order as to costs.