Collector of Central Excise Vs. Meltex, Malsters Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-08-1995

Reported in : (1996)(81)ELT489TriDel

Appellant : Collector of Central Excise

Respondent : Meltex, Malsters Ltd.

Judgement :

1. The appeal is by the Collector of Central Excise, Chandigarh against the order of the Collector of Central Excise (Appeals), Chandigarh. In her order, the Collector (Appeals) over-ruled the finding of the Assistant Collector of Central Excise, Patiala, that the respondent had not paid duty under protest for the period from 20-11-1980, and held that the duty had been paid under protest from this date to 25-7-1982.

She directed sanction of the claim if otherwise admissable.

2. Shri B.D. Bhagat J.D.R. adopts the reasoning in the appeal, and says that, since the gate passes and other relevant documents had not been endorsed "Duty paid under protest", the provisions of Rule 233B of the Central Excise Rules 19421 have not been complied with. The duty has therefore not been paid under protest. The protest letter was only delivered on 24-10-1981.

4. The essential ingredient of the protest procedure described in Rule 233B is that the assessee must file a letter signifying his intention to pay duty under protest.

While there are decisions to say that duty can be paid under protest even if some of the procedural requirements specified in Rule 233B, there is no dispute that the letter of protest has to be filed. I cannot agree that it was the department's lapse in not advising the respondent to file a protest letter. Further, the Collector (Appeals) only goes on the assumption that gate passes etc.

were suitably endorsed from 20-11-1980 onwards, and has not entered a specific finding on this. If, however, the respondent had delivered the protest letter on.24-10-1981, payment of duty from then till the protest was vacated would be tinder protest, even if the procedure was not fully followed. The appeal itself says that the protest letter was filed on 24-10-1981.

5. In the result I modify the order of the Collector (Appeals) and hold that payment of duty under protest commenced from 24-10-1981. The Assistant Collector shall decide the claim for refund on this basis along the lines indicated above, in accordance with natural justice.

The procedure to be followed in cases where the duty is paid "under protest" was for the first time introduced w.e.f. 1st June, 1981 by induction of Rule 233B in the Central Excise Rules, 1944. Therefore, the question of compliance with the procedure of the said Rule where the duty is paid "under protest" prior to this date does not arise as held by the Hon'ble CEGAT in a series of cases - Collector v. Ashok Manufacturing Co. -1990 (48) E.L.T. 571, IDPL v. Collector -1987 (27) E.L.T. 356 and National Leather Cloth Manufacturing Co. v. Collector - 1989 (44) E.L.T. 288.

The Appellate Tribunal in the case of National Leather Cloth Manufacturing Co. v. Collector -1989 (44) E.L.T. 288 has specifically held that a protest made on the Gate Passes is a valid protest prior to the introduction of Rule 233B and the procedure laid down under the said rule is inapplicable to payments of duty made prior to 1-6-1981.

Further in the cases of Metro Ark v. Collector - 1990 (50) E.L.T. 133 and Collector v. Ashoka Leyland - 1987 (29) E.L.T. 530 the Appellate Tribunal has held that a protest once made will continue till the dispute is finally settled.

In view of this settled position, the Collector (Appeals') order that the payment of duty under protest is to be taken from 20-11-1980 cannot be dislodged on the ground that letter of protest has to be filed as prescribed in Rule 233B of Central Excise Rules. It appears, the Hon'ble Bench has overlooked the fact that procedure of Rule 233B came into effect only from 1st June, 1981 and had not retrospective effect or applicability. The matter, therefore, needs reconsideration and rectification being contrary to a number of Tribunal's decisions and settled position of law.