

Collector of Central Excise Vs. Pfizer Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-19-1995

Reported in : (1996)(83)ELT398Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Pfizer Ltd.

Judgement :

1. This is an appeal against the Order-in-Appeal No. M-596/TH-40/84, dated 20-6-1984 setting aside the Order-in-Original No. V (14E) 18.227/79/15647, dated 6-10-1979.

2. The appellants cleared certain goods under the gate passes dated 22-6-1977. Because of some constraints the goods could not be removed and the Customers were not prepared to receive and hence the goods were retained in the factory and D3 declaration dated 24-6-1977 was filed.

The same goods were subsequently removed under the other gate passes on [14-4-1978] on due payment of duty. As there was a double payment, the appellants vide their application dated 11-9-1978 applied for refund of the duty. The adjudicating authority rejected the same on the ground that the refund claim pertained to the duty paid on 22-6-1977 and as such the same was hit by the provisions of [Section] 11B of the Central Excises & Salt Act. In the appeal before the Collector (A) he came to the conclusion that undisputedly there was a double duty payment and further right from the day when D 3 declarations were filed, the

parties had made endorsement in their RT 12 returns as well as by way of in the PLA account and the said amount was to be refunded. Even the gate passes were also submitted alongwith the D3 declaration. He therefore came to the conclusion that the refund claim filed should not be rejected as time barred and allowed the refund claim.

3. Mrs. Bharati Chavan, the Id. JDR appearing for the appellant submits that going by the application for refund there is a clear mention that the refund was claimed for the duty paid on 22-6-1977 and undisputedly the application is filed on 11-9-1978 and is therefore hit by the provisions of Section 11 of the Act.

4. Shri H.C. Daruwala, the Id. Advocate, for the respondent submits that right from the date when D 3 declaration was filed, they have been urging for the refund and that even in their [RT 12] returns their claim was advanced which stood rejected on technical grounds of requirement to file a separate application for the same. He therefore submits that the refund claim ought to be sanctioned and that the order passed by the Collector (A) is just.

5. There is no denial to the fact that in the instant case that double duty has been paid. There is also no denial that D3 declaration and the necessary entry in the PLA account as also in the [RT 12] returns were made. It is only the formal application that has come at a later stage, when the double duty payment has been made and when the claim appears to have been made even in [RT 12] returns at an appropriate time within the period prescribed under Section [11B] of the Central Excise Act, the claim taken on the application at a later date should not come in the way of granting the refund which is otherwise legitimately due. The approach of the Collector (A) therefore does not warrant any interference and the appeal is therefore rejected.

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