

Collector of Central Excise Vs. Associated Traders

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-18-1996

Reported in : (1996)(87)ELT746TriDel

Appellant : Collector of Central Excise

Respondent : Associated Traders

Judgement :

1. Assessee received back from the buyers a consignment each of pine tar and rosin oil compound. Pine tar was returned because of strike in the buyer's factory and the other commodity because it was rejected by the buyer. Both consignments were accompanied by the gate pass issued on clearance from the assessee factory. On receipt of the consignment the assessee took credit of the duty paid as reflected in the gate passes. It cleared pine tar [as such] and the other commodity after reprocessing. The department objected to credit being taken on the ground that the goods were not inputs and had not been declared as such. Notice was issued proposing recovery of such credit and again on the ground that this credit had been used towards payment of duty on various other consignments which was not permissible. Duty was demanded on the consignment which had been cleared by applying this credit for payment.

2. The Assistant Collector, in his order held that assessee was not entitled to take credit on the duty paid on the consignment received back by it and confirmed the demand for duty equal to the credit. He however held that once such credit wrongly taken and it was reversed by payment of duty equal to it. There is no

question of demanding duty once again on the ground of goods having been cleared by using this credit. He also imposed penalty of Rs. 4,000/- for lapse of the assessee.

3. In appeal Collector (Appeals) held that there was only a procedural error on the part of the assessee allowed its appeal and set aside the Assistant Collector's order; hence this appeal by the department. The Departmental Representative reiterates the grounds in appeal.

4. The argument of the advocate for the respondent is that even if it is held that credit has been wrongly taken, duty has been paid a second time on the goods which was not required by law. There is therefore no loss to the department, and only a procedural infraction. The department was aware of the receipt of the goods as D3 intimation was filed within 24 hours. He says that the respondent's action is covered by the provisions of the Bombay Collec-torate Notice 89/89.

6. The goods were not inputs declared by the respondent, nor they are used as such. The pine tar cleared as such and the rosin oil compound subjected to some form of reprocessing the nature of which is not indicated. What was cleared however was a same commodity as one came in - rosin oil compound. The goods were therefore not inputs covered under inputs within the meaning of Rule 57A and credit could not be taken on them. The matter is covered by the ratio of the decision of this Tribunal in Collector v. Sigma Paints reported in 1994 (69) E.L.T. 779 in which the identical issue was involved. This decision was passed much after issue of the trade notice. The contention that there was no loss of revenue may be true in this case but that is not sufficient reason to condone such contravention of procedure. This principle could be invoked to cover any number of wrong actions. An assessee might short pay duty on one commodity manufactured by him on the ground that he had earlier paid an excise duty on another and claim that there has been no loss to the revenue.

7. I however accept the contention of the respondent that it did not have any intention to evade duty or default revenue. Its bona fides are established on that it filed the D3 intimation within time and so kept the Officers informed about the receipt of the goods. Penalty therefore was not imposable.

8. I therefore partially allow the appeal and set aside the order of the Collector (Appeals) and restore the Assistant Collector's order dealing with this. Penalty imposed is set aside.

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