

Collector of Central Excise Vs. Kanwal Engineers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-08-1996

Reported in : (1996)(87)ELT141TriDel

Appellant : Collector of Central Excise

Respondent : Kanwal Engineers

Judgement :

1. These revenue appeals are directed against common Order in Appeal No. 1911-14/CE/Chd./91, dated 12-12-1991 of Commissioner of Central Excise (Appeals). The issue relates to admissibility or otherwise of refund in respect of credit obtained on inputs used in the manufacture of final products which are exported under bond.
2. Arguing for the revenue the learned D.R. submits that the refund claim had been rejected on the ground that there was no AR 4/AR 4A from which export could be established. Commissioner (Appeals) had erred in allowing such refund claim. Only on the basis of shipping bills and bill of lading the Commissioner (Appeals) was not authorised to sanction the refund.
3. Arguing on behalf of the respondent the learned advocate submits that all the necessary documents like GP 2, shipping bill, bill of lading, invoices, bank certificates were attached to the refund claim.

Such claim cannot be rejected merely because there was no AR 4/AR 4A since otherwise the fact of export was fully established. In fact, Notification No. 85/77-*C.E., dated 1-3-1987 issued under Sub-rule (3) of Rule 57F Central Excise Rules, 1944 clearly provides the presentation of bill of lading or shipping bill or export application as proof that goods had been exported. In this view of the matter, the Commissioner (Appeals) was correct in holding that shipping bill along with RT 12 returns and GP 2s are evidence in support of the claim that the goods have been exported.

4. We have heard both sides. The refund of credit of duty taken is admissible subject to such conditions or limitations as set out in the relevant Notification. Notification No. 85/77*, dated 1-3-1987 itself specifies bill of lading or shipping bill as acceptable documents on the basis of which export could be proved. In this case since GP 2 and shipping bill and bank certificates had been produced nothing more remained to be done to establish proof of export. Commissioner (Appeal's) order therefore cannot be faulted. We are also not able to agree that Commissioner was not competent to sanction refund.

Commissioner (Appeals) in fact has allowed refund claims, if the credit is otherwise admissible. The actual sanction was to be accorded by Assistant Commissioner. We therefore do not find any infirmity in the order of Commissioner (Appeals) holding that in these circumstances shipping bill can be considered as valid document in absence of AR 4/AR 4A.5. In the result, we reject the revenue appeals and uphold the impugned order.

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