CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 10.04.2017
Date of pronouncement: 11.05.2017

Excise Appeal No. 143 of 2011

(Arising out of order-in-original No. 355(CB) CE/JPR-II/2010 dated 31.08.2010/20.09.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur-II).

M/s Dinesh Tobacco Industries Appellant

Vs.

CCE, Jaipur Respondent

Appearance:

Shri O. P. Agarwal, C.A. for the appellant
Sh. H. C. Saini, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 53197/2017

Per: **V. Padmanabhan**:

This appeal is against the order–in-appeal No. 355 dated 31.08.2010 passed by the Commissioner (Appeals), Jaipur.

2. The appellant is engaged in the manufacture of pan masala and pan masala containing tobacco falling under Chapter 21 and 24 respectively of the schedule to the Central Excise Tariff Act, 1985. The appellant was working under the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 notified through Notification No. 30/2008-CE (NT) dated 01.07.2008. For the period 12.08.2008 to 30.09.2008, the

appellant deposited duty amounting to Rs. 2,81,99,057/- in terms of Notification No. 42/2008-CE dated 01.07.2008. All the goods manufactured during the said period were exported under bond under Rule 19 of the Central Excise Rules, 2002. The appellant filed refund claim for the duty paid as above, since the entire goods manufactured during the above period were exported. However, the adjudicating authority rejected the refund claim on the ground that the exported goods were manufactured from duty-free material under notification No. 43/2001-CE(NT) dated 26.01.2001 and duty paid goods cannot be exported under Rule 19 of the Central Excise Rules, 2002. When the said order was challenged before the 1st Appellate Authority, the same was upheld. Aggrieved by the impugned order, the present appeal has been filed.

3. With the above background, we have heard Shri O.P. Agarwal, ld. CA for the appellant and Shri H. C. Saini, AR for the Revenue.

4. The ld. Counsel for the appellant submitted that the entire production during the disputed period was cleared for export. Accordingly, he claimed that the duty paid in advance in terms of the Pan Masala Packing Machines Rules, will need to be refunded to them. He further submitted that the relevant notification was amended w.e.f. 05.03.2009 in which a new rule was inserted, Rule 14A, which specified that no notified goods shall be exported without payment of duty. The claim of the appellant is that the amendment will be applicable prospectively and exports under bond was permissible prior to that date. Even though the goods have been cleared for export under bond in terms of Rule 19 of the Central Excise Rules, since the goods have been exported,

the duty paid in terms of the compounded levy is required to be refunded to them.

5. Ld. AR supported the impugned order on behalf of the Revenue.

6. The dispute covers the period 12.08.2008 to 30.09.2008. There is no dispute on the fact that the entire production of the appellant factory during the above period has been exported. In terms of the provisions of compounded levy notified by the government, the duty is payable in terms of the number of machines working in the appellants factory, and the same was paid in advance. The goods were exported from the appellant's factory under bond in terms of Rule 19 of the Central Excise Rules, 2002. This rule enables export of goods without payment of duty from the factory of a manufacturer. Rule 18 provides the alternate procedure by which a manufacturer can pay duty on his products and subsequently, after export of the same, claim rebate of the duty so paid. Revenue was of the opinion that since the goods have been exported in terms of Rule 19, the appellant will not be entitled to the rebate of duty paid. Accordingly, the refund claim stands rejected by both the authorities below. The Commissioner (Appeals) has also given a finding that there is no provision for grant of rebate of Central Excise duty on the export of goods covered by Notification No. 30/2008-CE(NT).

7. When goods are manufactured in a factory and these are exported, Central Excise duty paid on such goods will be eligible as a rebate. Rule 19 of the Central Excise Rules prescribes the procedure for exporting goods under bond even without payment of duty. In the present case, the goods are covered by compounded levy scheme under which the manufacturer is required to pay

a lumpsum amount per machine by way of excise duty on the goods produced in the factory. For the disputed period, such duty payable under the compounded levy scheme also stands paid in advance. Since the entire production of goods in the appellant's factory during the disputed period has been exported, there is no justification for non payment of refund of such duty paid. The fact that there was no provision for grant of rebate of excise duty on export of goods covered by the compounded levy scheme cannot be cited as a reason for not grant of rebate. The Government has put further restrictions in terms of Notification No. 5/2009-CE (NT) dated 05.03.2009 by which a new rule has been inserted, Rule 14A, which prohibits export without payment of duty of the goods covered under the compounded levy scheme. However, since the dispute pertains to the period prior to 05.03.2009, such amendment will not come in the way of grant of refund.

8. In view of the above discussions, the impugned order is set-aside and refund of duty paid under the compounded levy scheme is allowed with consequential relief to the appellant.

(Pronounced on 11.05.2017).

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Pant