

2012 (2) ECS (116) (Tri-Mum)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. E/1305/2004- Mum.

M/s Vidyut Metalics Pvt. Ltd.
Vs
Commissioner of Central Excise, Mumbai-III

(Arising out of Order-in-Appeal No. RJB/ M-III/518/2003 dated 22.12.2003 passed by the Commissioner of Central Excise (Appeals) Mumbai-III)

For approval and signature

Hon'ble Mr. S.S.Kang, Vice President
Hon'ble Mr. Sahab Singh, Member (Technical)

M/s Vidyut Metalics Pvt. Ltd. : Appellant
Vs
Commissioner of Central Excise, Mumbai-III : Respondent

Appearance

Shri Varun Parmar, C.A. for Appellant

Shri V.K. Singh Additional Commissioner (AR) for respondent

CORAM:

Mr. S.S.Kang, Vice President
Mr. Sahab Singh, Member (Technical)

Date of hearing: 21/06/2012
Date of decision: 21/06/2012

ORDER NO: A/665/12/EB/C-II

“We find that applicants availed credit in respect of the lubricating oil and the same was used thereafter the same is cleared from the factory without payment of duty. The appellant paid the duty at the asking of the Revenue. The assessment regarding the demand is not challenge by the appellants. The appellants challenge the demand by way of filing the refund claim. The Hon’ble Supreme Court in the case Collector of Central Excise, Kanpur Vs. Flock India Ltd. held that in the absence of challenge to the assessment order the refund is not maintainable. In the present case, as the appellants are challenging excisability of the goods which were cleared without payment of duty. In the refund application which is not permissible. Hence the appeal is dismissed.” [Para 7]

Per: S.S. Kang

1. Heard both sides.
2. The appellant filed this appeal against the impugned order whereby the refund claim of the appellant of Rs.16,350/- is rejected.
3. The brief facts of the case are that appellants are engaged in the manufacture of safety Razor Blades and Shaving System. The appellants cleared certain quantity of used Lubricating Oil without payment of duty. The revenue objected to it that the appellant paid an amount of Rs.16,350/- by reversing the credit under protest simultaneously has been filed a refund claim of the same amount.
4. The show cause notice was issued for rejected of the refund and thereafter adjudicating authority rejected the refund and the same is upheld by the Commissioner (Appeals).
5. The applicant submitted that the used lubricating oil cannot be considered as manufactured product and the same is also not marketable. The appellant relied upon the decision of Hon'ble Supreme Court in the case of collector of Central Excise, Patna Vs. Tata Iron & Steel Co. Ltd. reported in 2004 (165) ELT 386 (S.C.) to submit that Zinc dross, flux skimming and zinc scalings arising as by-product during galvanization of steel sheets, are not marketable commodity-appellant also relied upon the Hon'ble Supreme Court's decision in the case of Union of India Vs. Ahmedabad Electricity Co. Ltd. reported in 2003 (158) ELT 3 (S.C.) to submit that sender is not excisable goods. Hence, the rejection of refund is not sustainable.
6. The contention of revenue is that the duty has been paid by the appellant and the appellant has not challenged the assessment order. The appellant cannot challenge the dutiability of the goods in the refund claim. The contention of Revenue is that applicants availed credit in respect of the Lubricating Oil therefore in case the same is cleared from the factory of production the applicants are liable to reverse the credit. The Revenue submitted that even the waste and scrap generated during manufacture of goods are liable for duty.
7. We find that applicants availed credit in respect of the lubricating oil and the same was used thereafter the same is cleared from the factory without payment of duty. The appellant paid the duty at the asking of the Revenue. The assessment regarding the demand is not challenge by the appellants. The appellants challenge the demand by way of filing the refund claim. The Hon'ble Supreme Court in the case Collector of Central Excise, Kanpur Vs. Flock India Ltd. held that in the absence of challenge to the assessment order the refund is not maintainable. In the present case, as the appellants are challenging excisability of the goods which were cleared without

payment of duty. In the refund application which is not permissible. Hence the appeal is dismissed.

(Dictated in court)