

2014 (4) ECS (38) (Tri. - Ahd.)

In the Customs Excise & Service Tax Appellate Tribunal,
West Zonal Bench, Ahmedabad

C.C.E., AHMEDABAD

V/s.

M/s. PARIXIT INDUSTRIES LTD

Date of Hearing: 10/09/2014

Date of Decision: 18/09/2014

Appeal No. E/548/2007

[Arising out of OIA No. 70/2007(Ahd-I) dtd. 15.2.2007 Passed by The Commissioner (A),CE, Ahmedabad I]

Appearance:

Shri S K Shukla (AR)

Written Submission

For the Appellant

For the Respondent

CORAM:

Mr. M.V. Ravindran, Hon'ble Member (Judicial)

Mr. H.K. Thakur, Hon'ble Member (Technical)

(Order No. A/11641 / 2014 dtd. 18/9/2014)

“In the present proceedings also the assessments were never made provisional and the original duty assessment was not varied. Cestat Mumbai, in a difference of opinion matter, has also held in the case of M/s Nicholas Piramal (I) Ltd vs Commissioner of Customs, Airport, Mumbai [2014.TIOL.1716.CESTAT(MUM)] that exemption not claimed at the time of assessment cannot be claimed by way of a refund claim without challenging the original assessment.” (para 4.1)

Per: Mr. H K Thakur:

1. This appeal has been filed by the Revenue against OIA No. 70/2007(Ahd-I) dtd 15.2.2007 passed by the commissioner (Appeals), Ahmedabad.
2. Shri S K Shukla (AR) appearing on behalf of the Revenue argued that the appellant paid duty on certain goods manufactured by them at the time of clearance. Subsequently, appellant filed a refund claim of Rs 7,40,861/- by claiming exemption under Notification No. 6/2002-CE dtd 1.3.2002 in view of supply made to Kerala Water Authority on the basis of a certificate issued by Dist Collector, Eranakulam, as per condition No. 47 A prescribed against Sr No.

196A of Notification No. 6/2002-CE dtd 1.3.2002. It is Revenue's case that the appellant first cleared the goods on payment of duty to their own premises in Kochi and the goods were not directly cleared from their manufacturing premises to Kerala Water Authority and no certificates were produced at the time of clearance of the goods. It was argued that duty was paid under self assessment and no refund claim can be filed by the appellant unless the assessment already made is varied or altered. He relies upon the following case laws in support of his argument that conditions specified under exemption Notification should be strictly followed and that no refund claim can be entertained unless the original assessment made is contested:-

- i) M/s Airport Authority of India vs CC, Chennai - 2005(180) ELT. 223 (Tri.-Del)
- ii) M/s Kartar Rolling Mills vs. CCE., New Delhi - 2006(197) ELT.151(SC)
- iii) M/s CCE, New Delhi vs Hari Chand Shri Gopal - 2005(188) ELT 353 (SC)
- iv) M/s Eagle Flask Industries Ltd vs CCE., Pune - 2004(171) ELT.296(SC)

2.1 Learned AR also relied upon the judgment of M/s Maharashtra Cylinders Pvt Ltd vs. CESTAT, Mumbai 210(259) ELT.369(Bom.) to drive home the point that judgment of the Supreme Court in the case of M/s Priya Blue Industries vs CC (Prev.) [2004-TIOL-78-SC-CUS] is also applicable to a case of self assessment.

3. Shri Jayant Bhatt (Manager In-direct Taxation) appeared on behalf of the Respondent and made written submission. It is the case of the respondent that refund claim is admissible to them even if certificate required under Notification No. 6/2002-CE was not produced at the time of clearance especially when the refund claim is filed within the prescribed time Respondent relied upon the following case laws:

- i) CCE, Cochin vs OEN India Ltd - 2006(202) ELT.836 (Tri.-Bang.)
- ii) Dynamic Laminates (I) Ltd vs CCE, Chandigarh - 2003(151) ELT. 2905 (Tri.-Del)
- iii) CCE, Chennai vs Dynaspeed Integrated Systems Ltd -2002(147) ELT. 541(Tri.-Chennai)
- iv) Share Medical Care vs UOI - 2007(209) ELT. 321 (SC)
- v) CCE vs Suburban Engg Works (Ca.) P Ltd - 1991(56) ELT. 470
- vi) Delhi Chemicals & Pharmaceuticals Works (P) Ltd vs CCE-1988(37) ELT. 257(Tri.)

- vii) Auto Tractors Ltd vs Collector of Custom (A), 1989(39) ELT. 494 (SC)
 - viii) Enar Chemic Pvt. Ltd vs CCE Vadodara - 2011(274) ELT.221 (Tri.- Ahmd.)
 - ix) CCE, Haldia vs Exide Industries Ltd - 2009(247) ELT.87 (Cal.)
 - x) CCE, Vadodara vs Ircon Internationals Ltd - 2008(228) ELT. 587 (Tri.- Ahmd.)
 - xi) Gujarat Ambuja Cement vs CCE., Bhavnagar - 2007(216) ELT.460 (Tri.- Ahmd)
 - xii) CC (Airport) Chennai vs Compagnie General Des Eaux - 2005(192) ELT. 201 (Tri.-Chennai)
 - xiii) CC Bangalore vs Integra Micro Systems (P) Ltd - 2005(180) ELT.174 (Tri.- Bang.)
 - xiv) Carbon & Chemicals India Ltd vs CC Cochin - 2004(176) ELT. 466 (Tri. - Del.)
4. Heard both sides and perused the case records. The case of the Revenue is that respondent is not eligible for refund claim of duty which was paid at the time of clearance under self-assessment and the assessment so made is not varied or altered subsequently by any appropriate authority. It is observed from the case laws relied upon by the Revenue that the issue is no more res integra and has been considered by a series of decisions passed by the Court including Apex court. In the case of M/s Maharashtra Cylinders Pvt. Ltd. vs CESTAT, Mumbai (Supra). Hon'ble High Court of Mumbai, while relying upon the Apex court decision in the case of M/s Priya Blue Industries Ltd vs CC (Prev) (Supra), held as follows :

"We do not find any merit in the above contentions. Admittedly, while clearing the goods on payment of excise duty, the procedure for removal of goods on provisional basis has not been followed. The Apex Court in the case of Metal Forgings vs Union of India [2002(146) ELT.241 (SC)] has held that in the absence of order of provisional assessment, the clearance cannot be said to be on provisional assessment basis.

Where the goods are cleared under the self removal procedure basis on approved classification list and approved price list, the clearances are on self assessment and unless such self assessment is varied or altered, the question of refunding the duty paid on self assessment does not rise at all. The apex court in the case of M/s Priya Blue Industries Ltd vs Commissioner of Customs (Preventive) [AIR 2004 SC.5115 = 2004 (172) ELT. 145(SC)] has held that validity of an assessment cannot be

considered while dealing with the refund claim. The said ratio would apply to the self assessment as well. “

- 4.1 In the present proceedings also the assessments were never made provisional and the original duty assessment was not varied. Cestat Mumbai, in a difference of opinion matter, has also held in the case of M/s Nicholas Piramal (I) Ltd vs Commissioner of Customs, Airport, Mumbai [2014.TIOL.1716. CESTAT(MUM)] that exemption not claimed at the time of assessment cannot be claimed by way of a refund claim without challenging the original assessment.
5. In view of the above settled position of law, appeal filed by the Revenue is required to be allowed by setting aside the OIA dtd 15.2.2007 passed by the first Appellate Authority and OIO No.MP/07/06/REF dtd 8.11.2006 passed by the Adjudicating Authority is required to be restored.
6. Based on the above observations, appeal filed by the Revenue is allowed.

(Pronounced in the Court on 18.9.2014)

(M.V. Ravindran)
Member (Judicial)

(H.K. Thakur)
Member (Technical)