
(2014) 08 MAD CK 0224

In the Madras High Court

Case No : Civil Misc. Appeal No. 1937 of 2006

Lakshmi Automatic Loom Works Ltd.

APPELLANT

Vs

Deputy Commissioner of Central Excise

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Citation : (2014) 309 ELT 400 : (2014) 47 GST 627 : (2014) 29 GSTR 619

Hon'ble Judges : R. Sudhakar, J;G.M. Akbar Ali, J

Bench : Division Bench

Judgement

R. Sudhakar, J.—This Civil Miscellaneous Appeal, filed by the assessee as against the order of the Customs, Excise and Service Tax Appellate Tribunal, Chennai, was admitted by this Court on the following substantial questions of law:

"(a) Whether the Tribunal was right in rejecting the refund claim on the ground that the goods in respect of which refund was claimed was disposed off in any manner, then the production of goods of the same class, ignoring the fact that the goods cleared from the factory before repair and after are machineries only?

(b) Whether the Tribunal is right in holding that the duty paid twice over by the manufacturer on the same goods cannot be allowed as refund by mere fact that the said goods were cleared as fitment of knitting machine?

(c) Whether the Tribunal is right in holding that the part of the machine refunded to the manufacturer for repair and its subsequent removal after fitment in any other machine for the same class will not be covered under the provisions of Rule 173L?"

The appellant in this case is the manufacturer of textile machinery under sub-heading 8447.00 of the CETA Schedule and parts thereof under sub-heading 8448.90. They cleared knitting machines to M/s. Tiruma Textiles Pvt. Ltd., Noida on payment of duty under invoice dated 19.12.1998. The duty paid on the full machine was Rs. 2,52,138/-. The two major components of the machine, viz., (i)

knitting head assembly and (ii) take down drive assembly, both falling under sub-heading 8448.90 were returned by the buyer on 19.5.1999 as defective and the same was intimated to the Department by the appellant vide D3 intimation in terms of Rule 173L of the Central Excise Rules, 1944. Prior to the receipt of two components as above, the appellant supplied one unit of knitting head assembly and one unit of take down drive assembly to the Noida unit on 26.4.1999 as replacement under cover of invoice evidencing payment of Rs. 1,41,440/-. The appellant incorporated the returned parts into a full machine (knitting machine), and the same was supplied to another party, viz., M/s. Sangeet Sintex Ltd. on 05.06.1999 on payment of duty. The appellant claimed refund of duty of Rs. 1,41,440/- in terms of Rule 173L of the Central Excise Rules, 1944, as the parts incorporated in the subsequent machine had already suffered an excise duty.

2. The Assistant Commissioner of Central Excise, by order dated 04.1.2000, rejected the claim of refund holding that the goods returned and cleared after process were not goods of same class and the components, viz., Knitting head assembly and take down drive assembly were used in the manufacture of goods of different class, namely knitting machine, falling under sub-heading 8447.00. Aggrieved against the order of the Adjudicating Authority, the appellant preferred an appeal before the Commissioner of Central Excise (Appeals), who, by order dated 07.01.2004, upheld the order of the Adjudicating Authority. As against the same, the appellant preferred an appeal before the Tribunal.

3. By order dated 25.11.2005, the Tribunal relying upon the decisions of the Tribunal in the case of Indian Dyestuff Industries Ltd. v. CCE 1995 (77) ELT 580 (Trib. - Bom.) and in the case of Dekka Chem Ltd. v. CCE 2001 (130) ELT 935 (Trib. - Mum.) and interpreting Rule 173L of the Central Excise Rules, came to the conclusion that the goods returned, namely, knitting head assembly and take down drive assembly falling under sub-heading 8448.90 were incorporated in a knitting machine, which falls under sub-heading 8447.00. Hence, both are not falling under same class. Therefore, the assessee was not entitled to claim refund, as the goods cleared did not satisfy the requirement of Rule 173L of the Central Excise Rules. Aggrieved by the order of the Tribunal, the appellant/assessee has filed the present Civil Miscellaneous Appeal.

4. Learned counsel appearing for the appellant submits that the appellant cleared knitting machine to M/s. Thiruma Textiles Pvt. Ltd., Noida on payment of duty. Subsequently two defective parts were replaced on payment of duty. The said defective parts were incorporated in another knitting machine and was cleared on payment of duty. Hence, the defective parts suffered duty twice. He also submits that the receipt of defective parts cannot be treated as independent transaction and the mere fitment of parts in the machine and removal thereof on payment of duty cannot disentitle the appellant to claim refund of duty that was paid twice. He also submits that the parts, returned as defective in one machinery, if reconditioned and used in the production of another machinery of the same class, the manufacturer is entitled for refund of the duty.

5. Heard learned counsel appearing for the appellant and the learned standing counsel appearing for the respondents and perused the materials placed before this Court.

6. The issue involved in this case revolves around Rule 173 L of the Central Excise Rules, 1944, which reads as follows:

"Rule 173L. Refund of duty on goods returned to factory-- (1) The Commissioner may grant refund of the duty paid on manufactured excisable goods issued for home consumption from a factory, which are returned to the same or any other factory for being re-made, refined, reconditioned or subjected to any other similar process in the factory:

Provided that --

(i) to (iv), (2)"

(3) No refund under sub-rule (1) shall be paid until the processes mentioned herein, have been completed and an account under sub-rule (2) having been rendered to the satisfaction of the Commissioner within six months of the return of the goods to the factory. No refund shall be admissible in respect of the duty and, -

(i) & (ii)"

(iii) on goods which are disposed of in any manner other than for production of goods of the same class;

(iv) on the un-manufactured tobacco from which cigars, cheroots and cigarettes so returned to the factory have been produced;

(v) if the value of the goods at the time of their return to the factory is, in the opinion of the Commissioner, less than the amount of duty originally paid upon them at the time of their clearance from the factory."

7. It is not in dispute that the goods originally cleared was circular knitting machine falling under sub-heading 8447.00 on which duty was paid. However, on the complaint, the defective parts viz., knitting head assembly and take down drive assembly which falls under sub-heading 8448.90, were returned and similar parts were supplied as replacement. The parts supplied as replacement suffered separate duty. The defective parts returned to the supplier was reconditioned and fitted in an another circular knitting machine and was supplied to another purchaser on which duty was paid. Since the defective parts returned for being reconditioned and subjected to similar process of manufacturing, the assessee claimed refund of duty under sub clause (1) of Rule 173L of the Income-tax Act. However, proviso (3)(iii) to Rule 173L would stipulate that the goods (parts) disposed or re-used should be on the production of the goods of same class. Hence, the question arose as to whether the parts returned from a circular knitting machinery and incorporated in another knitting machinery would fall under same class.

8. The interpretation of Rule 173L of the Central Excise Rules clearly provides answer to this question. Rule 173L provides that refund of duty is admissible on the returned goods to the factory and no refund of duty is admissible in respect of the duty paid goods, which are disposed of in the manner other than for production of the goods of the same class. Therefore, sub-clause (iii) of Rule 173L(3) makes it clear that the refund is admissible only in respect of the goods used for the production of the goods of the same class and was cleared as such.

9. In the present case, what has been returned is not the goods falling under sub-heading 8447.00 of the CETA Schedule, but falling under sub-heading 8448.90 of the CETA Schedule. We find Chapter 84 - Machinery, mechanical appliances and parts thereof, sub-heading 84.48 provides for parts and accessories suitable for use, solely or principally with the machines of this heading or of Heading No. 84.44, 84.45, 84.46 or 84.47 (for example, spindles and spindle flyers, card clothing, combs, extruding nipples, shuttles, healds and heald-frames, hosiery needles), 8448.90 - parts. In this case, the goods which have been returned are admittedly fall under 8448.90 parts under separate tariff heading and unless such goods are disposed of in the manner and used for the production of the goods of same class, the question of refund of duty will not arise.

10. A reading of the order of the Tribunal shows that the goods, which were returned, namely, parts falling under sub-heading 8448.90 of the CETA Schedule, which were used for the production of the goods falling under sub-heading 8447.00, are not of the same class. Since the requirement under Rule 173L(3) (iii) of the Central Excise Rules has not been satisfied, the Tribunal upheld the order of the Authorities below. The Tribunal, relying upon the decisions of the Tribunal in the case of Indian Dyes tuff Industries Ltd. (supra) and in the case of Dekka Chem Ltd. (supra) held as follows:

"Yet another provision of Rule 173L is that the amount of refund payable shall in no case be in excess of duty payable on such goods after being remade, refined, reconditioned or the like. This provision presupposes that the second clearance of the goods must be after the process which is required to be undertaken in terms of the Rule. This condition also was not satisfied by the assessee".

11. Therefore, it is clear that whatever goods that have been returned should be subject to process and should be cleared as such. Therefore, the Tribunal followed the decisions in the case of Indian Dyestuff Industries Ltd. (supra) and in the case of Dekka Chem Ltd. (supra) to hold that the goods falling under particular tariff heading alone would be entitled to the benefit of Rule 173L of the Central Excise Rules and we find that the Tribunal was justified in accepting the plea of the Revenue. For the foregoing reasons, we pass the following order:

(i) The first and third questions of law raised by the assessee are answered in favour of the Revenue.

(ii) In so far as the second question of law is concerned, since the assessee did not satisfy the requirement of Rule 173L of the Central Excise Rules, the claim

for refund does not merit consideration and the assessee is not entitled to claim refund. Accordingly, the second question of law is answered against the assessee.

(iii) Consequently, the order of the Tribunal dated 25.11.2005 is confirmed.

In the result, this Civil Miscellaneous Appeal is dismissed. No costs.