(2016) 07 P&H CK 0200

In the Punjab And Haryana At Chandigarh

Case No : Central Excise Appeal Nos. 107 & 108 of 2014 (O&M)

Smt. Machine (India) Ltd. APPELLANT

Vs

Commissioner of C. Ex., Chandigarh-I RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Citation : (2016) 340 ELT 83

Hon'ble Judges : Rajesh Bindal and Harinder Singh Sidhu, JJ.

Bench : Division Bench

Advocate : Shri Jagmohan Bansal, Advocate, for the Appellant; Shri Saurabh Goel, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Rajesh Bindal, J.—This order will dispose of two appeals bearing CEA Nos. 107 and 108 of 2014. However, the facts are being taken from

CEA No. 107 of 2014.

2. Substantial questions of law sought to be raised by the appellant are extracted below :-

(a) Whether the impugned order is sustainable when the goods were actually exempted from duty?

(b) Whether duty can be paid in terms of SSI exemption notification on goods exported out of country?

(c) Whether demand is sustainable when appellant was entitled to refund had higher amount of duty been paid?

3. Learned counsel for the appellant submitted that the appellant is a small scale industrial unit. During the year 2003-2004, it had cleared the

goods for home consumption, whereas certain goods were exported out of India.

4. On the exports, made outside the country, in terms of Rule 19 of the Central Excise Rules, 2002, the appellant was not liable to pay any duty.

As far as sale of goods for home consumption is there, in terms of the Notification No. 9/2003-C.E., dated 1-3-2003 (Annexure A-1), the

appellant was liable to pay duty @ 9.6%. The normal rate of duty as prescribed in the Central Excise Tariff Act, 1985 (for short ''the Act'') was

16%. By mistake, even on the goods exported outside the country, the appellant deposited the duty @ 9.6%, though was not payable and even if

paid, the appellant was entitled to refund thereof. Whatever the amount of duty was paid by the appellant on the export of goods, the same was

refunded to the appellant.

5. On 23-7-2004, the appellant was issued a show cause notice (Annexure A-2) stating that on the export of goods outside the country, it was

required to pay duty @ 16% instead of 9.6% and, hence, violated the provisions of the Rules and the notification issued thereunder. Demand for

the differential amount of Rs. 1,43,010/- was sought to be raised.

6. The adjudicating authority confirmed the demand of Rs. 1,43,010/-. It was held that the appellant was liable to pay interest under Section 11AB

of the Central Excise Act, 1944 and penalty of Rs. 75,000/- was also imposed on the appellant under Rule 25 of the Rules.

7. In appeal before the Commissioner (Appeals), the appellant succeeded as vide order dated 14-9-2005 (Annexure A-4), the effect being

revenue neutral, the Appellate Authority set aside the order passed by the adjudicating authority. The Revenue preferred appeal against that order

before the Tribunal.

8. The Tribunal, though recorded that in case the appellant had paid duty at higher rate, the same was refundable to it, but still upheld the demand

along with interest, however, set aside the penalty [2015 (319) E.L.T. 331 (Tri. - Del.)].

9. The submission on behalf of the appellant is that once as per provisions of the Act and the Rules, the appellant was not liable to pay duty on

export of goods outside the country and in case any duty was paid, the same was refundable. Even if, by mistake the duty was paid at a lesser rate

by the appellant and the same was refunded to it. The effect being revenue neutral, no demand should have been raised by the adjudicating authority. He further submitted that the mistake occurred in view of Clause 4.1 of Chapter 8 of the Central Excise Manual, which provided that

goods shall be assessed to duty in the same manner as the goods for home consumption. As on the home consumption, the appellant was required

to pay duty @ 9.6%, he deposited duty at the same rate even for the goods exported outside the country.

10. In support of the claim, reliance was placed upon Commr. of C.Ex., Pune-III v. Siddheshwar Textile Mills Pvt. Ltd., 2015 (320) E.L.T.

524 (Bom.), Commissioner of Cus. and C.Ex. v. Textile Corpn. Marathwada Ltd., 2008 (231) E.L.T. 195 (S.C.) and Arvind Ltd. v.

Union of India, 2014 (300) E.L.T. 481 (Guj.).

11. On the other hand, learned counsel for the respondent submitted that once the appellant had chosen to pay duty on the goods exported outside

the country, the same was required to be paid under the Act @ 16%. The appellant had choice either to pay or not, as any duty paid was

refundable. However, if he had chosen to pay the same, then correct rate should have been applied. The demand was rightly created. The

appellant should pay the amount demanded along with interest and at this stage, he will not be entitled to refund thereof, the exports having been

made more than a year back. The application for refund could have been filed within one year thereafter.

12. After hearing learned counsel for the parties, we find merit in the contentions raised by learned counsel for the appellant.

13. It is not in dispute that the appellant exported the goods, on which no duty, as such, was payable and he could claim exemption. In case, any

duty was paid, the same was refundable in totality. If the goods are removed for home consumption, the duty @ 9.6% was leviable. The appellant,

by mistake, paid the duty even on the exported goods at the same rate, which was refunded to the appellant. For technical violation that the

appellant, in case, was to pay duty on the export consignment, which was ultimately refunded to him, the same should have been at the normal rate,

which was @ 16% and as the duty was paid @ 9.6%, he had violated the provisions and as a consequence, demand was raised.

14. The fact that the entire transactions were revenue neutral is not in dispute, as whatever duty appellant would have paid on the export

consignment, the same was refundable to the appellant. When the appellant paid the duty @ 9.6%, the refund was also granted at the same rate.

There was no difference as such. The effect of the transactions being revenue neutral, the action taken by the Department in raising demand of the

differential duty, which, in fact, was not leviable at all, was totally uncalled for.

15. For the reasons mentioned above, the substantial question of law, as raised in the present appeals, is answered in favour of the appellant-

assessee and against the Department.

16. The appeals stand disposed of.

