
(2010) 12 RAJ CK 0006

In the Rajasthan High Court

Case No : Central Excise Appeal No. 96 of 2009

Union of India

APPELLANT

Vs

Stainless India Ltd.

RESPONDENT

Date of Decision : 18-12-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G

Citation : (2011) 273 ELT 46

Hon'ble Judges : Dinesh Maheshwari, J;C.M. Totla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. By way of this appeal u/s 35-G of the Central Excise Act, 1944 ("the Act"), the appellant-Revenue seeks to question the Final Order dated 3-10-2007 as passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi ("the Tribunal") in Excise Appeal No. 3599/2005-SM(BR) [2008 (222) E.L.T. 210 (Tribunal)] whereby the Tribunal dismissed the appeal preferred by the Revenue and affirmed the order dated 31-8-2005 passed by the Commissioner (Appeal-II), Customs and Central Excise, Jaipur in Appeal No. 488 (HKS) CE/JPR-II/2005.

2. Briefly put, the relevant facts and background aspects of the matter are that the assessee Stainless India Limited, Tanawada, Jodhpur had cleared S.S. Flats falling under sub-heading No. 7220.10 of Central Excise Tariff Act, 1985 without payment of duty in terms of the Notification No. 42/2001-C.E. (NT.), dated 26-6-2001 to Rama Sheet Pvt. Ltd. for conversion into S.S. Cold Rolled Patta on job work basis. These S.S. Cold Rolled Pattas were also cleared without payment of duty for manufacture of S.S. Utensils on job work basis to M/s. J.K. Industries, Thane which were ultimately cleared for export by the assessee from the premises of the said M/s. J.K. Industries. It had been the case of the assessee that the requisite permission in this regard had been obtained from the Jurisdictional Deputy Commissioner in terms of the said Notification dated

26-6-2001 read with the Board's Circular No. 106/17/95-CX., dated 2-3-1995. However, the proceedings were initiated against the assessee on the ground that the procedure followed by them was not in terms of the Notification dated 26-6-2001. The Adjudicating Authority observed that the assessee had not procured excisable goods under the relevant provisions and hence, applicability of the provisions of Rule 19(2) and 19(3) as well as Notification dated 26-6-2001 was ruled out; and, accordingly, a demand of Rs. 3,47,356/- was confirmed under the impugned order dated 27-4-2005.

3. Aggrieved by the order dated 27-4-2005, the assessee preferred an appeal before the Commissioner (Appeals) and contended that clearance of S.S. Flats took place as per the permission given by the concerned authority; that they had already filed the proof of export in the jurisdictional range office in respect of S.S. Utensils from the premises of M/s. J.K. Industries; and that since the export of S.S. Utensils was not in dispute, therefore, the demand was not sustainable. The learned Appellate Commissioner allowed the appeal by the order dated 31-8-2005 with the following observation and findings :-

8. I have gone through the case records and submissions of the appellants, I find that the following facts are not in dispute :

(i) that the goods were removed under Bond with the permission of the department.

(ii) that the goods after processing have been cleared for export proof of which have been filed by the appellants.

(iii) that as per Board's Circular No. 603/40/2001-CX., dated 29-11-2001 issued in reference to Board's earlier Circular No. 106/17/95-CX., dated 2-3-95, it has been clarified that the manufacturer of chasis may be allowed to furnish bond in behalf of the body builders.

9. Since the goods have been exported, they do not attract any duty as held in the case of Alpha Garments v. C.C.C., New Delhi - 1996 (86) E.L.T. (600) and in number of case laws relied upon by the appellants, Further, when the facility of execution of bond is available to the manufacturer of the chasis in behalf of the body builders there is no reason to deny it to the manufacturer of the other commodities as provided under the Board's Circular dated 29-11-2001. Therefore, I find lot of forced in the appellants submission and accordingly the impugned Order-in-Original is set aside.

4. Aggrieved by the order so passed by the Appellate Commissioner, the appellant-Revenue preferred an appeal before the Tribunal that has been rejected by the impugned order dated 3-10-2007. The only contention raised by the Revenue before the Tribunal was that proper procedure had not been followed. The learned Member of the Tribunal found no case for interference particularly looked to the fact that, indisputably, the final product had been exported. The learned Member said, -

5. The Revenue in their appeal memo has again reiterated that proper procedure was not followed. However, I find that the fact of the final product having been exported does not stand disputed by the Revenue, in which case the ratio of the law declared by the Tribunal in the case of Alpha Garments would apply. Accordingly, I find that the Commissioner (Appeals) has rightly allowed the appeal of the respondents. Revenue's appeal is accordingly rejected.

5. Aggrieved, the Revenue has come up in this appeal u/s 35G of the Act of 1944 and it is contended that for the provision of Notification dated 26-6-2001 did not allow clearance of goods, i.e., S.S. Flats manufacture for conversion into S.S. Cold Rolled Pattas; and, subsequently, such Cold Rolled Fattas were manufacture for conversion into Utensils. It is submitted that a complete manufacture of goods was undertaken by both the job workers and hence, Board's circular was not applicable to such goods. It is contended that though the goods were removed with the permission of the Deputy Commissioner but when the discrepancy was brought to the notice, remedial measures were taken by issuing the demand notice; and since the permission was given erroneously, the Department was entitled to recover the duty for the goods in question. It is submitted that the case of Alpha Garments [1996 (86) E.L.T. 600 (Tribunal)] as relied upon by the Tribunal is not applicable for difference of fact situation. It is also submitted that the assessee's claim of having furnished the proof of export in respect of ultimate final product does not advance their cause as initially the goods were removed without payment of duty.

6. Having heard the learned counsel for the appellant and having perused the orders impugned, we do not find any merit in this appeal.

7. The basic and essential findings on facts as recorded by the Appellate Commissioner and as affirmed by the Tribunal (reproduced hereinabove) leave nothing to doubt and rather make it clear that the goods were removed by the assessee under Bond with the permission of the Department and then, after processing, the goods were cleared for export; and the final product has been exported. The suggestion as made in this appeal that at each stage, a final product came into existence, neither appears to be in conformity with the record nor seem to have been suggested before the Appellate Commissioner or the Tribunal.

8. In view of the aforesaid findings on facts, the learned Commissioner cannot be faulted in setting aside the order dated 27-4-2005; and the Tribunal has also rightly dismissed the appeal filed by the Revenue.

9. Consequently and as a result of the aforesaid, the instant appeal fails and is, therefore, dismissed.