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[2016] 68 taxmann.com 155 (New Delhi - CESTAT)

CESTAT, NEW DELHI BENCH

Ambika Solvex Ltd.

v.

Commissioner of Central Excise, Indore

R.K. SINGH, TECHNICAL MEMBER

FINAL ORDER NO. 50891/2016

APPEAL NO.E/56045/2014-EX[SM]

FEBRUARY 22, 2016

M.A. Patel, Consultant *for the Appellant*. **B.B. Sharma**, D.R. *for the Respondent*.

ORDER

1. Heard both sides.

2. The issue in this appeal is leviability of duty of PP bags which were procured duty free under Notification No. 43/2001-CE(NT) for packing of export goods. The appellant is a manufacturer of vegetable oil and De Oiled Cake (DOC). These items are exempt from Central Excise duty. It exported DOC for which it procured PP bags without payment of duty in terms of **Notification No. 43/2001-CE(NT) dated 26.6.2001**. The demand was confirmed on the ground that at the port at the time of loading of goods on to the ship, DOC was taken out of these bags and loaded on the ship bulk and these bags were discarded as scrap at the port and therefore as the bags were not exported the duty foregone in terms of Notification No. 43/2001-CE(NT) became recoverable.

3. Id. Consultant for the appellant vehemently argued that :

(i) DOC was also exported by train to Pakistan and in respect of such export DOC crossed the border in PP bags, but even for such exports the demand has been confirmed.

(ii) There is no dispute that the DOC was cleared packed in these bags and delivered at the Customs port in packed condition and therefore conditions of Notification No. 43/2001-CE(NT) are satisfied.

(iii) It has produced evidence that DOC cleared packed in these was duly exported and this fact is not in dispute.

4. The Id. DR, on the other hand, stated that at least in respect of DOC export by ships the PP bags were not exported and so the impugned duty became recoverable.

5. I have considered the contentions of both sides. As regards the exports to Pakistan by train there is no evidence that the goods did not cross the border packed in PP bags and therefore if there is any demand in respect of the same, the same would not be sustainable.

6. Regarding export of DOC by ships, it is a fact that such DOC was cleared from the factory packed in

the PP bags under proper AREs. While loading DOC on the ships, DOC was taken out of these bags which were essentially thrown as scrap. The contention of the Revenue is that because PP bags did not get exported duty foregone thereon became recoverable. I have perused the relevant Notification {No. 43/2001-CE(NT)} which is reproduced below :

"In exercise of the powers conferred by of sub-rule (3) read with sub-rule (2) of rule 19 of the Central Excise (No.2) Rules, 2001, the Central Board of Excise and Customs hereby notifies the conditions, safeguards and procedures for procurement of the excisable without payment of duty for the purpose of use in the manufacture or processing of export goods and their exportation out of India, to any country except Nepal and Bhutan, namely: -

- (i) the manufacturer or the processor intending to avail benefit of this notification shall register himself under rule 9 of the Central Excise No.2) Rules, 2001;
- (ii) provisions of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 shall be followed, *mutatis mutandis*;
- (iii) the manufacturer or processor shall, while filing declaration under the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, also declare ratio of input and output and rate of duty payable on excisable goods to be procured without payment of duty;
- (iv) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall also verify the correctness of the ratio of input and output and other particulars mentioned in the declaration filed before commencement of export of such goods. He may, if necessary, call for samples of finished goods or inspect such goods in the factory of manufacture for verifying the declarations. He shall, after being satisfied about the correctness of declarations, countersign the application in the manner specified in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001;
- (v) The manufacturer or processor may remove the excisable goods so received as such or after these have been partially processed during the course of manufacture or processing of finished goods to a place outside the factory -
 - (a) for the purposes of test, repairs, refining, reconditioning or carrying out any other operation necessary for the manufacture or processing of the finished goods and return the same to his factory without payment of duty for further use in the manufacture or processing of finished goods or remove the same without payment of duty in bond for export, provided that the waste, if any, arising in the course of such operation is also returned to the said factory of the manufacture or processing; or
 - (b) for the purpose of manufacture of intermediate products necessary for the manufacture or processing of finished goods and return the said intermediate products to his factory for further use in the manufacture or processing of finished goods without payment of duty or remove the same, without payment of duty in bond for export, provided that the waste, if any, arising in the course of such operation is also returned to the factory of manufacturer or processor; and
 - (c) any waste arising from the processing of the excisable goods may be removed on payment of appropriate duty as if such waste is manufactured in the factory of the

manufacturer or processor;

- (vi) the goods shall be exported on the application in Form A.R.E. 2 specified in the Annexure and the procedures specified in Ministry of Finance (Department of Revenue) **notification No.40/2001-Central Excise (N.T.) dated 26th June, 2001** or in **notification No.42/2001-Central Excise dated 26th June, 2001** shall be followed."

There is no doubt that the impugned bags were procured duty free under the said notification and were used for packing the export goods (*viz.* DOC) and DOC packed in these bags was cleared to the factory for export. The export goods reached the port in the same packing and it was only at the time of loading that possibly for the sake of efficient use of space, it was found useful to load DOC in bulk and therefore DOC was taken out of the bags and loaded on the ship and in the process bags were discarded. Thus the PP bags were used for manufacture/processing of the export goods as packing is certainly a process. The condition of the notification is that the goods (DOC) for the processing of which the bags were procured duty free should be exported. There is no dispute that DOC was exported and it is not the allegation that DOC was not exported. Even the evidence to that effect has been given in the form of Customs endorsed AREs. The said notification nowhere stipulates that the goods which were procured duty free under Notification No. 43/2001-CE(NT) are required to be exported.

7. In view of the foregoing analysis, I do not find the impugned demand sustainable. Accordingly, I set aside the impugned order and allow the appeal.