

(2011) 01 KAR CK 0214

Karnataka High Court

Case No: Writ Petition No. 14972 of 2009

Texport Syndicate (India) Ltd.

APPELLANT

Vs

Joint Secretary, M.F. (D.R.)

RESPONDENT

Date of Decision: Jan. 31, 2011

Acts Referred:

- Central Excise Act, 1944 - Section 11 B, 35 EE
- Central Excise Rules, 2002 - Rule 18, 19

Citation: (2011) 186 ECR 59 : (2011) 266 ELT 177

Hon'ble Judges: Huluvadi G. Ramesh, J

Bench: Single Bench

Advocate: K.S. Ravishankar, for the Appellant; G. Lakshmi, for Y. Hariprasad, CGC, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Huluvadi G. Ramesh, J.

Petitioner has sought for quashing annexure K passed by the Assessing Authority u/s 35EE of the Central Excise Act, 1944 as illegal and contrary to Rule 19 of the Central Excise Rules, 2002 read with notification dated 26-6-2001 and Section 11B of the Central Excise Act and to hold that the Petitioner is entitled to rebate of duty.

2. Petitioner is a company engaged in the manufacture of readymade garments falling within Entry 68 of the First Schedule to the Central Excise Tariff Act, 1985. As per Rule 18 of the Rules, Petitioner is entitled to claim rebate of the duly paid on export of readymade garments from India. It is stated, Petitioner has exported finished products for the period from 5-7-2004 to 20-9-2004 after paying duty, and he is entitled to rebate in terms of Rule 18 of the Rules. However, the Department issued a show cause notice holding that Petitioner has violated the conditions of notification under Rule 19. But, according to the Petitioner, there is no such violation

rather, he is entitled for rebate on duty paid on the exported goods as per Rule 18. The application filed for refund of the duty paid came to be rejected against which, appeal was preferred. The Commissioner for Appeals allowed the claim of the Petitioner. Thereafter, the Assistant Commissioner extended the rebate against which, the Department filed revision. The Joint Secretary, acting u/s 35EE of the Excise Act, 1944, allowed the revision thereby setting aside the order of the Commissioner allowing the rebate. Hence, this petition.

3. Heard the counsel representing the parties.

4. What has been canvassed by the Petitioner is, as per Rule 18 of the Rules, he is entitled to rebate and he has paid Rs. 84,11,693/- as duty for the goods exported. Since he was entitled for refund of the entire excise duty paid, he filed an application and the same came to be rejected on technical ground stating that Rule 19 applies to the case. According to the learned Counsel, even the amendment introduced provided for rebate. Any incidental articles used viz., pins, hangers, elastics for manufacturing and export is treated as goods exempted from duty. By virtue of the notification issued by the Central Government, rebate was extended to the Petitioner. As per Rule 19 any excisable goods can be exported without payment of duty from the Factory or Warehouse, if approved by the Commissioner.

5. In the case on hand the Commissioner for Appeals having rightly considered that incidental articles would not come within the duty liability, has exempted payment of duty on the incidental articles used for the purpose of exporting readymade garments. Explanation to Rule 18 includes the goods shipped. It appears, pursuant to the order passed by the Commissioner for Appeals, the Assistant Commissioner has rightly allowed the claim of the Petitioner and ordered for refund/return of the duty paid as rebate. Only on technical ground the revisional authority having entertain the appeal, deprived the benefit extended to the Petitioner as per Rule 18, under Rule 19 of the Rules, which is erroneous.

6. In the circumstances, after hearing the counsel for the Petitioner and the Respondents, the impugned order at annexure K. passed by the Revisional Authority is set aside. Matter is remitted to the Assistant Commissioner for Excise to consider the incidental articles used like pins, hangars and elastics would form independent material over which duty has to be levied or it is incidental and it does carry any rebate, and pass appropriate orders according to law, taking into consideration the arguments advanced by the Petitioner.

7. Petition is allowed.