

Commissioner of Central Excise Vs. Electro Steel Castings Ltd.

Commissioner of Central Excise Vs. Electro Steel Castings Ltd.

SooperKanoon Citation : sooperkanoon.com/1167523

Court : Chennai

Decided On : Jun-27-2013

Judge : The Hon'Ble Mrs.Justice Chitra Venkataraman

Appellant : Commissioner of Central Excise

Respondent : Electro Steel Castings Ltd.

Judgement :

In the High Court of Judicature at Madras Dated: 27.06.2013 Coram The Honourable Mrs.JUSTICE CHITRA VENKATARAMAN and The Honourable Ms.JUSTICE K.B.K.VASUKI C.M.A.No.3901 of 2005 and C.M.P.No.19325 of 2005 The Commissioner of Central Excise, Chennai II Commissionerate, No.692, M.H.U Complex, Anna Salai, Chennai-35.Appellant versus 1.

M/s.Electro Steel Castings Ltd GNT Road, Elavur Village, Gummidipoondi 601 211.

2.

CustoMs.Excise and Service Tax Appellate Tribunal, South Zonal Bench, Shasthri Bhawan 26, Haddows Road, Chennai-6.Respondents Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act against the Final order No.530 of 2005 dated 10.2.2005 on the file of the CustoMs.Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.K.Mohanamurali SCGSC For Respondents :
Mr.V.Balasubramanian (R1) Notice served, No appearance (R2)

JUDGMENT

(This Judgment was made by K.B.K.VASUKI, J.) This appeal is filed by the Revenue against the order passed by the Customs Excise and Service Tax Appellate Tribunal, raising the following substantial question of law: ".Is CESTAT correct in holding that the assessee's claim will not fall under the jurisdiction of the period of limitation as stipulated in Section 11B of the Central Excise Act, 1944 during the relevant period (six months) since the issue is after the off shoot of Order in Appeal passed in favour of the assessee, whereas the Hon'ble Apex Court in the case of M/s.Dena Snuff PVT.Ltd v.

the Commissioner of Central Excise, Chandigarh reported in 2003 (157) ELT500(SC) has held that ".the period of limitation of one year prescribed under Sub Section (1) will not apply in case duties are paid under protest.

The question then is from which date will the period of limitation start to run?.

It appears on the basis of the paragraph of Mafatlal Industries decision which has been relied upon by the Tribunal, it would have to be from the final decision in the assessee's own case?".

2.The assessee/respondent company is engaged in the manufacture of cast iron spun pipes falling under CSH730300.

The assessee, while calculating the assessable value, did not include the profits earned on account of freight charges for the period from December 1994 to September 1995.

In pursuance of the same, adjudication proceedings was initiated against the assessee.

During the adjudication proceedings, the assessee filed a protest letter under Rule 233B on 7.12.1994.

After due process of law, the Additional Commissioner passed an order on 17.10.1997, thereby the demands raised in the show cause notice for the period from March 1994 to September 1995 was confirmed.

Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Central Excise (Appeals).³The appeal preferred by the assessee before the Commissioner of Central Excise (Appeals) for the earlier period was disposed of on 30.7.1998, thereby setting aside the order of the Assessing Officer.

On the strength of such order, the assessee preferred a refund claim for refund of the duty paid during the period from December 1994 to September 1995 and the same was ordered by the Assistant Commissioner vide letter dated 5.10.1999 on a sum of Rs.3,22,897/-.

During the pendency of the appeal before the Commissioner of Central Excise (Appeals).the assessee paid the duty on freight charges for the subsequent period from 30.10.1995 to 31.5.1997.

The assessee also preferred another refund claim on 15.4.1999 for refund of duty paid for the period from 30.10.1995 to 31.5.1997 based on the order of the Commissioner of Central Excise (Appeals) dated 30.7.1998.

The said refund claim was rejected by the lower authority on 29.9.2000 on the ground of limitation that the duty was not paid under protest.

The Assessing Officer rejected the refund claim made by the assessee, holding that the same was not filed within 6 months from the date of payment of duty as per Section 11B of Central Excise Act.

Following the decision of the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd v.

Union of India (1997 Vol.89 ELT247(SC)).the Assessing Officer held that refund claim made on 15.4.99 for refund of duty was not within 6 months from the date of payment of duty.

As such, refund claim was barred by limitation.

Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Central Excise (Appeals).⁴The Appellate Authority, on detailed analysis of facts involved and the circumstances under which the duty was paid for the subsequent period and refund claim was made on 15.4.1999, accepted the claim of the assessee that in view of the observation of the CEGAT in the decision reported in 1988 (33) ELT592T).M/S.Engineering Projects (India) Ltd v.

CCE, Calcutta, duty paid during the pendency of appeal proceedings should be treated as ".paid under protest".

and the refund claim made for the subsequent period should be treated as in continuation of the earlier claim and hence the time limit as per Section 11 B was not attracted.

The FiRs.Appellate Authority allowed the appeal by directing the lower authority to grant refund of duty, after verifying all other aspects.

Aggrieved by this, the Revenue went on appeal before the Customs.Excise and Service Tax Appellate Tribunal.

Applying the decision of the Apex court reported in 1997 (89) ELT247 the Tribunal rejected the Revenue's appeal.

Hence, the present appeal before this Court by the Revenue.

5.Thus, the determination of substantial question of law involved herein depends upon the question of limitation to make any refund claim, which inturn depends upon the mode of payment of duty under protest or not under protest?.

While according to the Revenue, the payment of duty is without any protest, the assessee's categorical stand is that it is deemed to be paid under protest.

6.Both the Revenue and assessee relied on the same decision of the Apex Court in the case of Mafatlal Industries Ltd reported in 1997 (89) ELT247(SC) in respect of their respective contentions whether the refund claim was made under protest

or not.

7. Though it is sought to be contended on the side of the Revenue that the decision of the Supreme court in the case cited above is more applicable to the case of the Revenue, we are not inclined to accept the same.

The Apex Court in para 83 under an identical situation, dealt with the same issue, wherein also payment was made, when the assessee has been contesting the levy of duty for the earlier period.

The Supreme Court is compelled to say that ".Now, where a person proposes to contest his liability by way of appeal, revision or in the higher courts, he would naturally pay the duty, whenever he does, under protest.

It is difficult to imagine that a manufacturer would pay the duty without protest even when he contests the levy of duty, its rate, classification or any other aspect...".

That being the categorical observation of the Supreme Court, the same is squarely applicable to the facts of the present case in favour of the assessee, wherein also, the payment of duty was made only during the pendency of appeal against very levy of duty for the earlier period.

8. In other case reported in (2004) 13 SCC113 (Dena Snuff (P) Ltd v.

Commissioner of Central Excise, Chandigarh) relied on by the Revenue, the Supreme Court has in para 5 dealt with the issue relating to actual dispute involved herein, but the same relates to cause of action.

In that case, the Hon'ble Supreme Court was called upon to decide starting date of period of limitation, whether it is from the date on which identical third party's case or the assessee's own case was finally decided by the Tribunal.

In the case cited above, the payment was made under protest and the assessee originally classified the products under sub heading 2404.60.

Whereas, the Revenue classified the products under sub heading 2404.50.

The CESTAT in the case of another assessee held the same product to be classifiable under the heading 2404.60 and the same was accepted by the Tribunal in favour of the assessee.

On the basis of such decision, the appellant filed the application for refund of the duty paid under protest.

In the mean while, the assessee's own case involving same issue came to be decided on 28.8.2003 in favour of the assessee on the basis of the identical finding that the assessee's product would be classifiable under sub heading 2404.60 and not under 2404.50.

When the question to be determined whether the cause of action for refund claim arises after disposal of the assessee's own case or after disposal of the third party-assessee's case, the Hon'ble Supreme Court in para 5 held that the relevant date from which the period of limitation starts to run is from the date on which the assessee's own case finally decided by the Tribunal i.e.on 28.8.2003.

Nevertheless, it is held that the payment of duty was made under protest was within time and no limitation was applicable to the refund claim of such duty and refund was hence ordered and the same was also upheld by the Supreme Court.

9.Thus, the facts involved in both the cases decided by the Supreme Court were identical and the Supreme Court, while dealing with the issue relating to period of limitation, uniformly held that no limitation was applicable to the payment made under protest.

The Hon'ble supreme Court in the earlier judgment clearly observed that the payment made, when the assessee has been challenging the earlier levy of duty, is deemed to be under protest and not otherwise.

Hence, the combined appreciation of both the cases decided by the Supreme Court would lead to an irresistible inference that the payment made herein is also deemed to be under protest and no limitation is applicable and the claim is maintainable and is rightly decided by the CESTAT.

10. In the light of the above discussion, we find no justification to interfere with the order of the Customs, Excise and Service Tax Appellate Tribunal.

The Civil Miscellaneous Appeal is hence dismissed.

Consequently, connected Miscellaneous Petition is closed.

No costs.

rk To The Customs, Excise and Service Tax Appellate Tribunal South Zonal Bench
Chennai

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com