Collector of C. Ex. Vs. Controls and Switchgear Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-12-1998

Reported in : (1998)(102)ELT224TriDel

Appellant : Collector of C. Ex.

Respondent : Controls and Switchgear Co. Ltd.

Judgement :

1. Revenue has sought the setting aside of the order-in-appeal passed by the Commissioner of Central Excise (Appeals), Ghaziabad dated 28-8-1995 by which the Commissioner (Appeals) had set aside the recovery of Modvat credit of Rs. 1,57,777.53 and redemption fine of Rs. 25,000/- imposed on the respondents by the Deputy Commissioner by order-in-original dated 23-12-1994. The Commissioner (Appeals) had, however, upheld the order of the Deputy Commissioner imposing a penalty of Rs. 10,000/-.

2. Shri D.K. Nayyar, ld. JDR submitted that the Collector (Appeals) had based his order on a judgment given by the Tribunal while disposing of a stay application. Since the order relied upon was not a final judgment, the same could not be relied upon as a precedent. He also contended that the Collector (Appeals) has wrongly held that the SCN was hit by limitation since the period of limitation has to be calculated from the date when the goods were entered in RG23A Part I.3. Shri S.S. Mehra, ld. Counsel raised a preliminary objection as to the maintainability of the appeal since the order of the Commissioner filed along with the appeal does not disclose any ground of appeal. He referred to the order dated 27-11-1995 by

which the Commissioner had authorised the Assistant Commissioner to file the appeal in terms of Section 35B(2) of the Central Excise Act, 1944. In the said order the Commissioner had stated as under : "The Order-in-Appeal No. 308/95, dated 28-8-1995 passed by Commissioner (Appeals), Central Excise, Ghaziabad in the case of Controls & Switchgears Co. received in this office on 31-8-1995 has been examined and not found to be legal and proper on the grounds annexed hereto." 4. Ld. Consultant points out that there is nothing on record to show that any grounds have been annexed to the said order as claimed by the Commissioner. He further referred to the prescribed format (Form No.EA3) for filing appeals before the Tribunal -which specifically provided for verification in writing by the appellant. He submitted that there is nothing on record to show that the Assistant Commissioner while filing the instant Memo of Appeal had complied with the said requirement. Further, on the merits of the case, he submitted that the duty demand was hit by limitation under Rule 57-I in the facts of the case. He submitted that the SCN was issued on 10-8-1993 and the duty demand related to the amounts credited in RG 23A Part II between 1-2-1993 and 10-2-1993. He submitted that in terms of Rule 57-I the six month period is to be counted from the date of taking credit in RG 23A Part II and not in the making of entries in RG 23A Part I. He, therefore, submitted that there was no infirmity in the order of Commissioner (Appeals) holding that the SCN issued on 10-8-1993 was hit by limitation. He also submitted that the ground taken in the present appeal viz., that the order-in-appeal had relied on the reasoning given by the CEGAT while disposing of a stay application cannot be relied upon as a precedent, was not correct. He also submitted that the Collector (Appeals) had correctly relied on the case of Ion Exchange Ltd. v. CCE, 1991 (56) E.L.T. 865 as far as confiscation and redemption was concerned.

4. I have considered the submissions made on both sides. On a perusal of the record I find that the preliminary objections raised by the ld.Consultant on behalf of the Respondents have merit inasmuch as I find that there is nothing on record to show that the Commissioner has annexed any ground of Appeal while passing his order dated 27-11-1995 directing the Assistant Commissioner to file the appeal' before the Tribunal. I also find that the ld. Consultant is right in his contention that the appeal filed by the Assistant Commissioner does not contain verification

prescribed under the prescribed format. As regards the question of limitation, I find from the Tribunal's order in CCE v.Jagdamba Electronics, 1993 (68) E.L.T. 144 that the Tribunal has held that the relevant date for computation of the limitation under Rule 57-I is the date of taking credit and not the date of its utilisation for payment of duty or date of submission of RT 12 Return. In the instant case there is no dispute on the fact that the duty was credited in RG 23A Part II between 1-2-1993 and 10-2-1993. The SCN issued on 10-8-1993, therefore, is clearly beyond the limitation period laid down under Rule 57-I.5. Having regard to the above I find that the objections raised by the Respondents in their Cross Objection are quite valid and the Revenue Appeal has to be set aside on the said ground alone.

6. Revenue Appeal is accordingly rejected. The Cross Objection filed by the Respondents is also disposed of in the above terms.