Commr. of C. Ex. Vs. Mansukh Dyeing and Printing Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-28-1999

Reported in : (1999)(113)ELT179TriDel

Appellant : Commr. of C. Ex.

Respondent : Mansukh Dyeing and Printing Mills

Judgement :

1. Briefly stated the facts of this case are as follows : The respondents herein paid duty at a certain rate on the excisable goods manufactured and cleared by them. At the time of assessment of RT 12 return, the appellants were given a credit by concerned Superintendent holding that they have paid a higher amount of duty. On the receipt of RT 12 returns, the respondents herein took the credit in their PLA. We note at this stage that the refund allowed by the Superintendent was not adjudicated upon on a refund application made by the respondents.

2. It was however felt by the Revenue that the refund, as had been allowed by the Superintendent, was erroneous on the ground that the lower rate of duty become applicable only from a subsequent date i.e.

date of passing of Finance Act on 13th May, 1986. Hence a show cause notice under Section 11A for recovery of erroneous refund was issued by the Superintendent. On adjudication, the Assistant Collector concerned confirmed the aforesaid amount of recovery under Section 11 A.3. On appeal, the respondents herein succeeded on the ground that in the meantime a Notification under Section

11C has been issued by the Central Government stating that a general practice was prevailing of charging the duty at the lower rate in respect of the said goods and therefore, no duty liability arose on any person who had not paid the higher amount of duty although leviable at a higher rate. The lower appellate authority relying on this Notification allowed the appeal of the respondents herein as mentioned above.

4. Hence this appeal by the Revenue before us. The sole ground taken in the appeal by Revenue is that refund claim is hit by provisions of unjust enrichment provided under Proviso to Section 11C(2). Therefore, the refund sanctioned is erroneous because the respondents has not been able to prove that they have not passed on burden of higher duty to their customers.

5. Opposing the contention, ld. Advocate Shri M.P. Devnath submits that no refund application has been made by the respondents in pursuance of the Notification under Section 11C. That Notification was issued only on 21-12-1988 bearing No. 31/88. This was suo moto credit permitted by the Superintendent by assessment of RT 12 returns dated 20-6-1986. He therefore, submits that the proviso to Sub-section (2) of Section 11C does not apply at all. The question of unjust enrichment does not apply because this is not a question of pending refund claim under Section 11B. There is no provision of any unjust enrichment whatsoever, and cannot be, in Section 11 A. He therefore, submits that the appeal deserves to be rejected.

6. We have carefully considered the pleas advanced from both the sides.

We agree with the submissions of ld. Advocate Shri M.P. Devnath for the respondents. As rightly pointed out by him proviso to Section 11C(2) does not apply in the facts and circumstances of the present case.

Therefore, the ground of appeal taken by the Revenue is not sustainable. On this short point itself, the appeal fails.

7. We also feel, as rightly pointed out by the ld. Advocate, appeal before us is not relating to an application for refund under Section 11B. The matter has originated

by notice issued by the Department under Section 11A. Therefore, the question of unjust enrichment in the present case does not arise as sought to be made applicable by the respondents. In this connection, reliance placed by the ld. Advocate on Tribunal's decision in the case of C.C.E., Ahmedabad v. Nayan Tobacco Products, Final Order No. 358/99-D, dated 23-4-1999, is squarely applicable and hence we dismiss this appeal.