

Harish Textiles Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-18-1984

Reported in : (1985)LC121Tri(Delhi)

Appellant : Harish Textiles

Respondent : Collector of Central Excise

Judgement :

1. The appellants are aggrieved of rejection of their refund claim for Rs. 3401.60 by both the lower authorities.
2. Brief facts of the case, which are not disputed, are as follows. The appellants were a powerloom unit without spinning or processing plant.

They were permitted to discharge their duty liability in respect of unprocessed cotton fabrics produced by them under the special procedure known as compounded levy scheme which was comprised in Rules 961 to 96MMMM of the Central Excise Rules, 1944. This procedure required the appellants to pay a certain sum in advance for a fixed period following. The second Proviso to Rule 96 J provided for adjustment of payment already made (recovery from or refund to the appellants, as the case may be) in case the rate of compounded levy was altered by the Government during the permitted period of manufacture. Rule 96MMMM provided for similar adjustment of the payment already made in case the factory ceased to work or reverted to the normal procedure. The appellants paid the compounded levy for the year 1-3-1977 to 28-2-1978 in February, 1977. By the

Budget proposals of 1977, which took effect from 18-6-1977, excise duty on unprocessed cotton fabrics produced on powerlooms was abolished, vide exemption Notification No. 134/77-C.E., dated 18-6-1977. In view of this full exemption, Rules 961 to 96MMMMM became redundant and they were deleted by Notification No. 146/77-C.E. issued simultaneously on 18-6-1977. This notification contained a saving clause which read as under : - "3. The omission of any rule or sub-rule made by Rule 2 shall not affect anything done or any action taken, before such omission, under the rule or sub-rule, as the case may be, so omitted." Since the appellants had paid compounded levy for the full one year in advance and since their goods became fully exempt from duty with effect from 18-6-1977, they applied for proportionate refund for the period 18-6-1977 to 28-2-1978. The Assistant Collector rejected their claim on the following two grounds :- (1) With the deletion of Rule 96 J, there remained no authority for granting any refunds.

(2) Clause 3 of Notification No. 146/77-C.E., dated 18-6-1977 (i.e.

the saving clause as reproduced above) precluded reopening of the past cases and sanctioning refunds.

The Appellate Collector incorrectly assumed that the Assistant Collector had rejected the appellants' claim as "time-barred under Rule 11, as the claim was lodged for the first time after the expiry of six months from the date on which the duty was exempted". On that assumption, the Appellate Collector held the Assistant Collector's order as correct and rejected the appellants' appeal.

3. Before us, the Department's Representative reiterated the grounds taken by the Asstt. Collector and the Appellate Collector. The appellants were not present personally during the hearing. However, they sent their submissions in writing and requested the Bench to decide the matter on the basis of their written arguments.

4. We have carefully considered the matter. At the outset, we observe that the Appellate Collector's finding that the appellants' claim was time-barred under Rule 11 was incorrect on facts. The appellants presented their refund claim on 19-11-1977, as seen from the opening sentence of the Assistant Collector's order. The claim was thus within six months from the date of duty exemption (18-6-1977).

That apart, it is our considered view that the limitation of Rule 11 did not apply to the facts of the present case. This rule related to refunds of duty paid. In the case before us, when the duty itself was withdrawn by the Government, the advance payment already made by the appellants, in so far as it related to the period subsequent to the withdrawal of duty, could not be treated as duty; it was only a deposit held with the Government and it ought to have been refunded as such. We find no force in the two grounds on which the Asstt. Collector rejected the appellants' claim. Refund of monies held as deposit with the Government did not require the authority of a specific rule in the Central Excise Rules, 1944. Secondly, the saving clause in Notification No. 146/77-C.E., dated 18-6-1977 applied to past acts ; it did not affect the appellants' right of refund which accrued on 18-6-1977 itself (i.e., the date of deletion of Rules 961-96 MMMMM. Sanctioning such a refund could not amount to reopening of any past cases. No authority in law has been brought to our notice whereby the Department could appropriate the money deposited in advance for the period for which the duty liability itself was subsequently withdrawn.

Accordingly, we allow the appeal with consequential relief to the appellants.

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