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Commissioner of Central Excise, Vs. M/S. United Vanaspati Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-15-2000

Appellant : Commissioner of Central Excise,

Respondent : M/S. United Vanaspati Ltd.

Judgement :

1. The Revenue seeks reference of the following questions of law stated to be arising out of Tribunal's Final Order dated 31.7.98: 1. Whether time limit prescribed under Section 11A of the Central Excise Salt Act, 1944 can be imported into money credit scheme under Chapter V AAA, Rule 57P of Central Excise Rules, 1944 which prescribed no limitation at all for recovery of credit wrongly taken.

ii) Whether credit allowed conditionally on the production of valid certificates can be permitted to a party when the certificates have been declared invalid subsequently and whether in such a situation benefit of credit does not automatically get disallowed under Rule 57P? iii) Whether fresh additional group can be admitted by Tribunal i.e.

second appeal stage and can be decided in favour of party on the basis of such additional grounds alone without going into the merits of a case and that too when the party throughout the proceedings before lower authorities as well as in the appeal have pleaded the case only on merits" 2. The brief facts leading up to the filing of the reference application are that the respondents/assessees herein who are engaged in the manufacture of vegetable products falling under Chapter Heading 15.04 of the Schedule to the CETA, 1985 availed credit on solvent

extracted mustard oil under Notification 27/87 dated 1.3.87, during the quarters ending June 88 and September 88 for using the said mustard oil in the manufacture of vegetable products. Such credit was permissible subject to the condition that the manufacturer produces a certificate from the Directorate of Vanaspati, Vegetable oils and Facts to the effect that the said mustard oil has been manufactured by solvent extraction process. The assessees had taken credit on the strength of certificates dated 12.1.89 and 26.5.89 issued by the Directorate of Vanaspati certifying that the quantity of mustard oil manufactured by M/s.Malwa Cotton Seeds Products Ltd. and supplied to the assessees herein had been manufactured from fixed vegetable oil obtained by solvent extraction process. Vide letter dated 31.7.89, the Directorate of Vanaspati intimated the Central Excise Department that the certificates dated 12.1.89 and 26.5.89 have been treated to be invalid.

In these circumstances show cause notice was issued to the assessees on 1.9.89 proposing recovery of a sum of Rs.2,13,005/-. The Assistant Collector vide Order-in-Original No.116/AC/D/92 dated 7.5.92 disallowed the credit holding that the certificates were invalid. The lower appellate authority also upheld the order of the Assistant Commissioner vide Order-in-Appeal No.872/CE/CHD/92 dated 30.10.92. So the assessees preferred appeal before the Tribunal. On appeal, the Tribunal, vide Final Order No.555/88-C dated 31.7.98 allowed the appeal preferred by the party only on the ground of time bar without entering into the arena on merits, by relying on the decision of the Tribunal in the case of M/s.IDL Chemicals Ltd. vs. CCE, Bhubaneshwar 1996 (16) RLT 785 wherein the Tribunal held that in absence of any finding of collusion, misstatement or suppression on the part of the party, extended time limit was not invokable and that the show cause notice dated 1.9.89 covering the period from April 1998 to September 1998 is time barred.

Hence this application.

3. On hearing both sides and noting the recent decision of the Supreme Court in the case of Commissioner of 200(119) ELT 611(SC) of Central Excise, Jaipur vs.Raghuvar India Ltd. wherein the Apex Court has held that Rules 57-I of the Central Excise Rules as it stood prior to its amendment on 16.10.88, did not

prescribe any period of limitation and, therefore, the question of time bar did not arise in cases of demands raised under this Rule, and further noting that there is no decision by any Hight Court or the Supreme Court on whether any period of limitation can be read into Rule 57P of the Central Excise Rules, we are of the view that this is a fit case for reference of the first question of law, as framed by the Revenue in the application to the jurisdictional High Court. Hence, we refer the following question for the considered opinion of the Hon'ble Punjab and Haryana Court at Chandigarh: "Whether time limit prescribed under Section 11A of the central Excise Salt Act, 1944 can be imported into money credit scheme under Chapter V AAA, Rule 57P of Central Excise Rules, 1944 which prescribed no limitation at all for recovery of credit wrongly taken".

Registry to draw up the statement of case and forward the papers to the Hon'ble High Court.

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