

Collector of Central Excise Vs. Dates Discs Private Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-30-1985

Reported in : (1999)(114)ELT637TriDel

Appellant : Collector of Central Excise

Respondent : Dates Discs Private Ltd.

Judgement :

1 This matter relates to the respondent's refund claim under Exemption Notification No. 198/76-C.E., dated 16-6-1976 (commonly known as incentive scheme for higher production). The Assistant Collector rejected the claim but the Appellate Collector allowed it. The Department has appealed before us against the Appellate Collector's order on the ground that the refund claim of the respondents was time barred under Rule 11 of the Central Excise Rules, 1944 and was, therefore not admissible.

2. We have heard both sides and have carefully considered their arguments as well as the record. We observe that in respect of the aforesaid notification, the Department prescribed a procedure sometimes in October, 1976 according to which an assessee could avail of the exemption only after he had submitted a declaration of his base year clearances in the specified form and the Assistant Collector had approved such declaration. It was not open to an assessee to avail of the exemption of his own. In this setting of facts, this Tribunal (Spl.

Bench D) have held in similar previous cases that on the date the assessee applied for availing of the exemption and for that purpose submitted his prescribed declaration for the Assistant Collector's approval, the assessee should be deemed to have staked his claim for the exemption and the limitation of Rule 11 should be considered to have stopped running against him on that date. Three of such cases are cited below :New Jatiaga Valley Tea Estates Ltd., Calcutta v. Collector of Central Excise, Shillong.Neelamalai Tea/Coffee Estates and Industries Ltd., Nilgiris v. Collector of Central Excise, Madras.

(iii) Order No. 71/85-D, dated 22-2-1985 [1985 (20) E.L.T. 389 (T)] in Appeal No. 353 of 1980 (D) of M/s. George Williamson (Assam) Ltd., Calcutta.

3. The respondents relied on the case cited at (iii) above. We noticed that the earlier 2 cases are cited in the Tribunal's order mentioned at (iii) above. In the present case, the claim of the respondents related to the period from 14-7-1976 to 5-2-1977. Their declaration in the prescribed form was submitted to the Asstt. Collector for approval on 19-5-1977. (This is the date mentioned in the Assistant Collector's order. The respondents stated before us that their declaration had been submitted to the Superintendent on 28-3-1977. However, this difference in the two dates is not material for the purpose of deciding the case before us). The time limit laid down in Rule 11 at that time was one year. Following the ratio of the aforesaid earlier orders of this Tribunal, we hold that the claim of the respondents was within the time limit of one year and hence it is not time barred.

4. The only new argument put-forth before us by the Department's representative was that the respondents were not entitled to the refund because they had not disputed the classification list [reliance on 1983 (14) E.L.T. -1853 (CEGAT) - Aditya Mills]. We observe that the exemption notification in this case was issued on 16-6-1976. It was effective from 1-7-1976. The procedure for implementation of the scheme of this notification was laid down by the Department some 4 months later. The mechanics of the scheme were such that it was not possible for an assessee to have obtained prior approval of the Asstt. Collector in the classification list itself. The assessee had to go through the alternative drill of submitting the base year declaration and getting prior approval thereon from the

Asstt. Collector. The respondents did go through that drill. And, as already observed by us in the previous paragraph, they staked their claim within the prescribed time limit of Rule 11. The Department's plea regarding the assessee having not disputed the classification list has, therefore, no substance.

5. In the light of our above discussions, we reject the Department's appeal.

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