

Beehive Foundry Engineering Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Aug-30-1985

Reported in : (1986)(6)LC401Tri(Chennai)

Appellant : Beehive Foundry Engineering

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal against the order of the Collector of Central Excise (Appeals) referred to supra setting aside the order of the Assistant Collector sanctioning refund of Rs. 28,487.64 on 26-3-1984.

2. The appellants herein filed a claim for refund of Rs. 28,487.64 by their letter dated 3-3-1979 and the claim represented differential duty paid on expenses incurred for erection of various manufactured items at different sites, and the amount was paid by the appellants pursuant to a demand by the Superintendent of Central Excise, Group XXIX, Madras-6 vide his letter dated 17-2-1977 in respect of goods cleared during the period 1-3-1975 to 31-1-1977. The appellants paid the amount demanded by the Superintendent under challan No. 280645 dated 4-3-1977 into the Reserve Bank of India, Madras and later on 1-4-1977 the appellants wrote a letter pointing out that the duty was paid under protest and on the basis of this protest they filed a claim for refund of differential duty paid on expenses incurred for erection at various sites as this would not form part of the assessable value and no duty was payable thereon. The Assistant Collector sanctioned the refund claim on 26-3-1984 and issued a cheque for the said amount on 29-3-1984.

This was reviewed by the Collector of Central Excise, Madras, who directed the filing of an appeal before the Collector of Central Excise (Appeals) in terms of Section 35E(2) of the Central Excises and Salt Act, 1944, on the ground that inasmuch as the protest in payment of the disputed amount of duty was lodged 27 days after its payment and not either before or on the date of payment, the refund claim is not tenable in law. The lower appellate authority under the impugned order without going into the questions urged by the Collector of Central Excise, took the view that since the disputed amount was paid by the appellants herein in pursuance of an order of the Superintendent of Central Excise referred to supra, the appellants should have challenged the correctness of the same before the appellate authority without filing any refund claim since it is an appealable order. The lower appellate authority further held that since the order of the Superintendent of Central Excise has not been appealed against and since claim for refund would in effect be an appeal against such an order of the Superintendent before the Assistant Collector who had no authority or jurisdiction to entertain an appeal or to set aside the order of the Superintendent sanction of refund is not correct in law.

It is against this order the appellants have come up by way of appeal before the Tribunal.

3. The important question that falls for determination is as to whether the communication issued by the Superintendent referred to supra in pursuance of which admittedly the appellant's paid the disputed duty amount is an administrative order or an appealable order passed in exercise of quasi-judicial authority. The learned representative for the appellants submitted that the amount was not paid in pursuance of any order as conceived in law and the Superintendent has not exercised any quasi-judicial function in calling upon the appellants to pay the disputed amount and if a quasi-judicial authority were to pass an order in exercise of its quasi-judicial functions, it has got necessarily to comply with certain fundamental procedures such as issuance of show cause notice, affording of opportunity of hearing to the affected party, consideration of the objections of the party aggrieved and then passing a reasoned speaking order. In the instant case, admittedly no show cause notice was issued and the communication of the

Superintendent dated 17-2-1977 is merely an administrative communication which can never be characterised as a quasi-judicial order of assessment in terms of the provisions of the Act and Rules. It was further urged that the lower appellate authority has suo motu revised the order of the Assistant Collector sanctioning refund without even affording an opportunity to the appellants to argue the question as to whether the letter of the Superintendent dated 17-2-1977 is an appealable order or not. The learned representative further argued that even the Collector of Central Excise in exercising the power of review did not advert to this aspect at all but merely confined to the question that the letter of protest of the appellants is not a valid protest in accordance with law, and this question has also not been considered by the lower appellate authority. He submitted that the impugned order is thus liable to be set aside.

4. The learned SDR urged that the letter of the Superintendent referred to above should be construed to be an appealable order and in the alternative it should be construed as a show cause notice pursuant to which the appellants should be deemed to have paid the disputed duty.

He urged that protest in payment of disputed duty must be either before or on the date of payment of the disputed amount and a protest letter lodged after 27 days of payment of the disputed amount cannot be construed to be protest within the meaning of the relevant rules.

5. I have carefully considered the submissions of the parties herein.

In my opinion, the lower appellate authority has misdirected himself in holding that the letter of the Superintendent dated 17-2-1977 is an appealable order. An appealable order cannot be passed by a quasi-judicial authority without conforming to the basic legal requirements of giving a show cause notice to the aggrieved party unless otherwise waived as per law, and in the instant case Rule 10 of the Central Excise Rules, 1944 which would govern the situation enjoins on an authority to give a show cause notice to the aggrieved party. As rightly contended by the learned representative for the appellants, a show cause notice should be issued to the aggrieved person in terms of Rule 10, objections of the appellants should have been invited, heard and the objections considered and a

speaking order should have been passed. In the instant case the letter of the Superintendent by no stretch of imagination could be considered to be an appealable order.

It is more a communication in the exercise of his administrative functions rather than an appealable order in exercise of his quasi-judicial functions. The ratio decidendi of the Division Bench ruling of the Delhi High Court reported in 1981 E.L.T. 632 (Del.) in the case of International Computers Indian Manufacturers Ltd. and Anr.

v. Union of India and Ors., relied upon by the learned representative for the appellants supports the view I have taken and the Delhi Bench has held that issuance of a show cause notice to a person to whom refund has been erroneously made has been statutorily provided and this is a principle of natural justice which is a condition precedent. Even if the letter of the Superintendent is considered to be a show cause notice, it cannot be construed as one either, as contended by the learned SDR, for the simple reason that a show cause notice and an order of assessment cannot be rolled into one. The fact also remains that neither the Collector of Central Excise who in exercise of his power of review nor the Assistant Collector who filed an appeal before the lower appellate authority in terms of Section 35E, ever contended that the communication of the Superintendent referred to supra is an appealable order and was not appealed against and therefore reached a stage of finality disentitling the Assistant Collector to sanction any refund. The lower appellate authority would appear to have taken up the stand that the communication of the Superintendent is in the nature of an appealable order without putting either of the party on notice of this issue and suo motu taking up the stand or affording them an opportunity of being heard. The appellate authority has also not considered under the impugned order the plea made on behalf of the Department that the letter of protest relied upon by the appellants is not a valid protest under the provisions of the Act and Rules. I therefore for the above reasons, set aside the impugned order and remand the matter to the lower appellate authority for fresh disposal of the case after affording the parties herein an opportunity of being heard.