Collector of Central Excise Vs. Malwa Sugar Mills Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-30-1985

Reported in : (1985)(5)LC2487Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Malwa Sugar Mills Co. Ltd.

Judgement :

1. The facts of this case, in brief, are that the respondents were found entitled for the exemption from duty in terms of notification No.146/74-Central Excises dated 12-10-1974 (commonly known as incentive rebate for higher production of sugar during the period from December, 1974 to September, 1975). The rebate was sanctioned to them by the department and credited into their Personal Ledger Account in August, 1976. Some 2 years and 4 months later, the department felt that some excess payment had been made to the respondents inasmuch as rebate had been paid to them even for the sugar exported without payment of any duty, out of the excess produced sugar. Accordingly, a show cause notice asking the respondents to pay back the excess rebate of Rs. 25,472.48 was issued on 21-12-1978. The Collector (Appeals) has set aside this demand. The department is now in appeal before us to have the demand restored.

2. We have heard both sides and have carefully considered the matter.

We agree with the department that the notification No. 146/74-CE dated 12-10-1974 was in the nature of an exemption or concession from duty and that logically

it could not be invoked where no duty was payable at all, such as, in the case of exports without payment of duty. However, we also find that in this case the department has not acted within the time frame permitted by the Central Excise Rule. Exports are not something which remain hidden from the department's notice. Clearances for export are documented in statutory central excise records such as from A.R.4A, gate passes, R.G. 1 account of production and disposal and in monthly return R.T. 12. A copy of the monthly return, along with the relevant gate passes, is required to be sent to the Superintendent of Central Excise having jurisdiction over sugar factory. Normally, therefore, even under the Self Removal Procedure, the department becomes aware of the quantities cleared for home consumption or for export within a month or two of the said clearances. In the present case, the department itself has stated that excess produced sugar started moving out of the respondents' factory on or after 21-12-1975 because on this date the closing stock of sugar in the factory equalled the quantity of sugar excess produced by the respondents during 1974-75. The export quantity, for which the demand has been issued, was cleared during the period from December, 1975 to January, 1976. Rebate for excess produced sugar was paid to the respondents 7-8 months later, in August, 1976, by which time the fact of export was well within the knowledge of the department. In the circumstances, if the department yet paid rebate even for the quantity exported, it has to be considered a case of erroneous refund under Rule 10 of the Central Excise Rules and for the recovery of which this rule fixed a time limit of six months.

3. The department's plea against the time bar is that the whole arrangement of paying the sugar rebate in anticipation of actual clearances of the excess produced sugar was an extra-legal one, not backed by any statutory rules, and, therefore, the payment made to the respondents ought to be treated as provisional. We find no merit in this plea. Apart from the fact that there is no provision in the Central Excises & Salt Act, 1944 or in the Central Excise Rules, 1944 to grant any provisional refund, in the present case at least the rebate paid towards the quantity exported could not be treated as provisional because the full facts of the export were within the department's knowledge when it determined and paid the said rebate. The Collector has come to us with a statutory appeal. This Tribunal has to dispose of the appeal in accordance with the provisions of the

Statute only. If the department wishes to have relief on the ground that what it had been doing was extra-legal, the remedy, if any, should have to be sought elsewhere.

4. On the facts of this case, we hold that the demand issued by the department was clearly time-barred under Rule 10 and it has to be set aside as such. Consequently, the appeal filed by the department for the restoration of the said demand is also rejected.