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Collector of Central Excise Vs. Doaba Cooperative Sugar Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-03-1985

Reported in : (1985)(5)LC2485Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Doaba Cooperative Sugar Mills

Judgement :

1.In this appeal, the department seeks to have the demand for central excise duty of Rs. 24,527.97 restored. The Collector (Appeals) has set aside this demand on the ground of time-bar.

2.On hearing both sides, we find that the relevant facts, chronologically, are as under :(i) January 1977 to The respondents exported some April 1977 sugar out of the excess produced quantity.(ii) 23-6-79 Refund of duty (commonly known as incentive rebate) in(iii) 31-8-82 Show cause notice-cum-demand issued by the department on Since clearances for export are documented in statutory records (Form A.R.-4A, Gate Passes and monthly R.T. 12 returns) copies of which are required to be supplied regularly to the department, the fact of export and the quantities exported can reasonably be presumed to be within the knowledge of the department. Yet, if in 1979 the department chose to grant the refund even in respect of such of the excess produced sugar as had been exported in 1977, it can only be called an erroneous payment on the part of the department for the recovery of which Section 11A of the Central Excises and Salt Act, 1944 set a time limit of six months. Earlier, a similar time limit was contained in Rule 10 of the

Central Excise Rules, 1944. The demand issued in 1982 was clearly long after the expiry of the permitted time limit. The department's assertion that the rebate was paid in advance of the actual clearances is factually incorrect in so far as the exports in question are concerned because the exports took place two years prior to the grant of rebate.

3. The other plea of the department is that since it had been following an extra-legal procedure, by giving the rebate in advance of actual clearances of the excess sugar, the payment should bedeemed to be a provisional one and the time limit of Section 11A should not apply to its recovery. We find no merit in this plea. There is no provision in the central excise law for any provisional refund. Secondly, in the present case at least the rebate paid towards the quantity exported cannot be treated as provisional because full facts of the export were known to the department when it determined and paid the said rebate.

Thirdly, when the department comes to us with a statutory appeal, the Tribunal has to decide it in accordance with the provisions of the statute only. If either party wishes to have relief on the ground that something extra-legal had been done, the remedy, if any, should have to be sought elsewhere.

4. Since the demand in this case was time-barred, the Collector (Appeals) was right in setting it aside. We reject this appeal.

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