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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-12-1986

Reported in : (1987)(10)LC101Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Prag Vanaspati Products

Judgement :

1. This appeal has been filed by the Revenue against the Order-in-appeal No. C. No. 339-CE/Appl./ KNP/80 dated 24.9.83 passed by the Collector of Customs (Appeals), New Delhi.

2. The facts of the case, in brief, are that on 27.12.77 the Respondents herein filed an application claiming refund of Central Excise duty paid by them during the period from 24.8.77 to 27.11.77.

The application was submitted to the Superintendent, Central Excise Range, who forwarded it to the Assistant Collector of Central Excise on 5.7.80. The Assistant Collector rejected the claim as time-barred under Rule 11 of the Central Excise Rules, 1944 as the application was received by him after expiry of six months from the date of payment of duty as prescribed in that rule. An appeal was filed before the Collector (Appeals) against the order of the Assistant Collector. It was urged by the appellants (respondents herein) that the application was made to the Range Superintendent as per practice. The appeal was allowed by the Collector (Appeals). He held that the application for refund was addressed to the Assistant

Collector; Superintendent (Central Excise Range) being a subordinate officer to the Assistant Collector, could as well be deemed to be a part of his office. There was a great force in the plea of the appellants (now respondent in this application) that the Superintendent should have acted according to the strict law, if there had been a change in law. The present appeal is against the said order of the Collector (Appeals).

3. During the hearing before us, Smt. J.K. Chander, learned J.D.R.argued for the appellants and Shri Bipin Garg, learned advocate argued for the respondents. Smt. Chander stated that Rule 11 of the Central Excise Rules was amended by Notification No. 267/77-CE dated 6.8.77.

According to the amended Rule 11, refund claim was required to be filed before the Assistant Collector of Central Excise before the expiry of six months from the date of payment of duty. The said Notification was circulated by the Collectorate of Central Excise, Kanpur vide Trade Notice No. 162/77 dated 17.8.77. There was no ambiguity in the Notification; it clearly laid down that the refund claim was to be made before the Assistant Collector. During the relevant period there was no practice in the Kanpur Collectorate for filing refund application before the Superintendent of Central Excise. She stated that the Additional Collector of Central Excise, Kanpur had confirmed the above position in writing. She further stated that in the Trade Notice No.77/1979 dated 25.4.79 issued by Kanpur Collectorate it was made very clear that according to amended Rule 11 refund application was to be made before the jurisdictional Assistant Collector of Central Excise and as such, the date of receipt by the Section Officer or the Range Officer would not be considered as the date of receipt of such refund claim for the purpose of rule 11 of the Central Excise Rules. The trade was advised that any person claiming refund of any duty paid by him should make an application for refund only to the Assistant Collector of Central Excise having the jurisdiction and not elsewhere before the expiry of six months from the date of payment of duty. Smt. Chander argued that the above trade notice would clearly indicate that there was no practice of receiving the refund application by the Superintendent of Central Excise of the Range during 1977 when the refund application was filed in this case by the respondents before the Superintendent of Central Excise. She

further said that her case was covered by the decision of this Tribunal in the case Of Shri Ambika Kandsari Udyog, Saharanpur v. Collector of Central Excise, Meerut, reported in 1985 (21) ELT 281 (Tribunal) 4. The learned advocate for the respondent stated that there was a practice of receiving refund claims by the Superintendent of Central Excise in Kanpur Collectorate. The respondents filed the application according to that practice. He said that the present case would be covered by the following earlier decisions of the Tribunal :(CEGAT) Shri Ambika Khandsari Udyog, Saharanpur v. Collector of Central Excise, Meerut.Southern Petrochemical Industries v. Collector of Central Excise, Madras.

iii) 1985 (19) E.L.T. 1987 (CEGAT) S.G. Aswani v. Collector of Customs, Calcutta.(Tribunal) Peria Karamala Tea and Produce Co. Ltd., Coimbatore v. Collector of Central Excise, Coimbatore.

5. We have considered the arguments of both sides, we have also carefully gone through the case records.

6. In the case of Shri Ambika Khandsari Udyog, Saharanpur, duty was paid during the period from 4.2.78 to 25.2.78. Refund claim was submitted to the Superintendent of Central Excise on 31.7.78 i.e.

within the statutory period of six months. The Superintendent accepted the application and forwarded to the Assistant Collector, who received it on 26.8.78, i.e. after expiry of the statutory time-limit. This Tribunal relied upon the Trade Notice No. 206/80 issued by Kanpur Central Excise Collectorate and made the following observation in paragraph 7 of its order : "In the absence of anything to the contrary, we can reasonably infer from this Trade Notice that, at least in 1978, the practice was that refund claims could be presented to the Superintendent. This inference is reinforced from the fact that Superintendent did entertain a refund claim by the appellants and passed it on to the Assistant Collector's office." "In this view of the matter, we have no hesitation in saying that the act of the application having been addressed to the Assistant Collector and having been presented to the jurisdictional Range Superintendent who entertained the same and passed it on to the office of the Assistant Collector, has to be held to be tantamount to making application to the Assistant Collector, particularly when the appellants

have been able to establish by reference to the Trade Notice issued by the Collectorate, that at the relevant time such a practice was allowed." 7. In Southern Petro-Chemical Industries case 1986 (24) ELT 686, the period of assessment was 7.6.80 to 11.6.80. The refund application addressed to the Assistant Collector of Central Excise was filed through the Superintendent of Central Excise on 5.12.80. The Assistant Collector received the application on 13.1.81, i.e. after expiry of six months prescribed in Rule 11 of the Central Excise Rules, 1944 and Section 11-B of the Central Excises & Salt Act, 1944. This Section of the act came into force with effect from 17.11.1980 by Notification No.182/80-CE dated 15.11.80. The refund claim was rejected first by the Asstt. Collector and then by the Appellate Collector of Customs & Central Excise, Madras. The appeal was, therefore, filed before this Tribunal, who remanded the matter to the Assistant Collector of Central Excise for deciding the question of limitation after giving the appellants an opportunity to show cause that a practice existed in Madras Central Excise Collectorate at the relevant time whereby refund applications were being received by the Range Superintendent on behalf of the Assistant Collector. In case he holds that such a practice existed, it could follow that the application in the case was made within time. He should in that case deal with the refund application on its merits.

8. In the case of S.G. Aswani, Calcutta v. Collector of Customs, Calcutta, reported in 1985 (19) ELT 187 (Tribunal), the appellant filed an appeal before the Collector (Appeals) against the order of the Additional Collector with the bona fide belief that from an order of the Additional Collector, appeal lay before the Collector (Appeals) because of such a decision of the Tribunal itself. But subsequently, this decision was reversed by another decision of the Tribunal that the appeal in such cases lay with the Tribunal. On receiving back the appeal from the Collector (Appeals), the appellant filed the appeal with the Tribunal immediately on the next day. It was held by the Tribunal that the appellant was prevented by sufficient cause from filing the appeal before the Tribunal in time and the delay was, therefore, condoned.Peria Karamalai Tea and Produce Co. Ltd., Coimbatore v. Collector of Central Excise, Coimbatore 1986 (23) ELT 174 (Tribunal), the refund claim related to the period from 25.3.78 to 31.3.78. The claim was presented to the jurisdictional Superintendent of Central Excise on 13.9.1978. It was entertained by him and,

after necessary verification at his end, he forwarded the same to the Assistant Collector, the sanctioning authority, on 27.9.78. By its order dated 21.1.85 the Tribunal held in that case that time-limit should be computed from the date of submission of the claim to the Superintendent, i.e. 13.9.78.Shri Ambica Khandsari Udyog, Saharanpur v. Collector of Central Excise, Meerut, the Tribunal gave much weight to the practice prevailing in the Central Excise Collectorate during the relevant period as it would be seen from the extract of the order quoted in paragraph 6 (supra). In the case of Southern Petro-Chemical Industries Corporation Ltd. v.Collector of Central Excise, the Tribunal laid emphasis on practice and remanded the case to the Assistant Collector for deciding the question of limitation after taking into consideration the practice, if any, existing in Madras Central Excise Collectorate at the relevant time whereby the refund applications were being received by the Range Superintendent on behalf of the Assistant Collector. It is to be seen in the present case whether any practice of receiving the refund claims by the Range Superintendent on behalf of the Assistant Collector existed in Kanpur Collectorate of Central Excise during the period from August to December, 1977. This is the relevant period in the present case.

11. As directed by this Bench during the hearing of this case, the learned J.D.R., with her letter No. BC/EX/459/84 dated 11.7.86, submitted to us a copy of letter No. IV-5/Review/84/12788 dated 15.4.86 from the Additional Collector of Central Excise, Kanpur to herself, Kanpur Collectorate Trade Notice No. 162/77 (Misc. No. 17/77) dated 17.8.77 alongwith its enclosure being Government of India, Ministry of Finance (Department of Revenue), New Delhi Notification No. 267/77-CE dated 6.8.77, Kanpur Collectorate's Trade Notice No. 77/1979 (all Excises No. 10/79) dated 25.4.79, Trade Notice No. 181/82 (all excises No. 4/82) dated 18.5.82 and Trade Notice No. 206/1980 (All Excises No.6/1980) dated 23.12.80. These documents were referred to by the Learned Departmental Representative during her arguments before us. She stated during the arguments that there was no practice in Kanpur Collectorate during the relevant time for receiving refund claims by the Range Superintendent of Central Excise on behalf of the Assistant Collector.

She has also stated that the Additional Collector of Central Excise, Kanpur in his written letter has confirmed this position. We find from the Additional Collector's letter addressed to Smt. Chander, Junior Departmental Representative that it has been stated inter alia in that letter that "...it would be incorrect to say that there was practice of filing refund claims before the RO/SO. and not the Assistant Collector." We have perused the copies of Trade Notices submitted by the learned J.D.R. We find from the Trade Notice No. 162/77 dated 17.8.77 that the Collector of Central Excise, Kanpur circulated copy of Government of India Notification No. 267/77-CE dated 6th August,' 1977.

By this Notification Rule 11 of the Central Excise Rules, 1944 was amended. Sub-rule (1) of this Rule, as amended, reads as follows : "Any person claiming refund of any duty paid by him may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months from the date of payment of duty." Trade Notice No. 77/1979 dated 25.4.79 was issued by the Collectorate inviting attention to the Trade Notice No. 162/77 dated 17.8.77 under which copy of Notification No. 267/77 dated 6.8.77 was circulated. In the Trade Notice dated 25.4.79, it was emphasised that the refund applications under amended Rule 11 of the Central Excise Rules were to be made to the Assistant Collector having jurisdiction over the assessee. It was made very clear therein that limitation period would be calculated on the basis of the date of receipt of claim by the Assistant Collector and the department would not be responsible for the delay caused on account of any party having sent the claim to an Officer other than the Assistant Collector. It was also stated very categorically that the date of receipt of application by the Sector Officer or the Range Officer would not be considered as the date of receipt of such refund claim for the purpose of Rule 11 of the Central Excise Rules, 1944. The first, sentence of para 2 of this Trade Notice reads as follows: "Instances have come to notice where the refund claims were filed with the jurisdictional Sector Officer or the Range Officer which is not regular." This shows that some refund claims were filed with the jurisdictional Sector Officer or the Range Officer, but as it was not regular, the Collectorate issued a Trade Notice advising the trade to file refund applications to the Assistant Collector, which was the requirement of law. Filing of refund claims by some claimants to jurisdictional Sector Officer or Range Officer on their own cannot be said to be an established

practice. It appears to us that notwithstanding the instructions contained in the Trade Notice No. 77/79 dated 25.4.79, some claimants submitted the refund claims before the lower authorities. To obviate any hardship and to safeguard the trade interest, Collectorate issued Trade Notice No. 206/80 stating that refund claims addressed to the Assistant Collector, but lodged with the jurisdictional Sector Officer or Range Officer would be deemded to have been lodged with the Assistant Collector when accepted by the Sector Officer or Range Officer on behalf of the Assistant Collector for the purpose of computing the time limit of six months under Section 11-B of Central Excises and "Salt Act. This Trade Notice was, however, withdrawn by another Trade Notice No. 181/82 (All Excises No. 4/82) dated 18.5.82. Trade Notices do not indicate whether such claims were filed as a matter of practice. Trade Notice No. 77/79 states that filing of claims before the Sector. Officer or Range Officer was not regular. Although in the case of Shri Ambika Khandsari Udyog, Saharanpur, the Tribunal observed that atleast in 1978 there was a practice of lodging the claims with the Superintendent of Central Excise, there is no evidence before us to show that there was such a practice in Kanpur Collectorate during the year 1977, when the impugned refund claim was filed in the present case. There is also no material before us 'to show that there were similar other claims in 1977. The Notification No. 267/77-CE dated 6.8.77 was duly circulated by the Collectorate on 17.8.77 and hence there could be no justification for filing refund claim before the Superintendent during the month of December, 1977. Learned Departmental Representative has made a submission in the court before us that there was no such practice during the relevant period. Her submission is supported by a written letter of the Additional Collector of Central Excise, Kanpur. In the absence of any specific materials to the contrary the submission made by the learned Departmental Representative on facts is to be accepted as correct. In this view of the matter, we are convinced that there was no established practice in the Kanpur Collectorate during 1977 for receiving the refund claims by the Superintendent of Central Excise on behalf of the jurisdictional Assistant Collector of Central Excise. The claim submitted by the appellants in the present case before the Superintendent is to be considered as a stray instance and not a part of an established practice. In the facts of the present case, therefore, the decisions of this Tribunal in the cases of Shri Ambica

Khandsari Udyog, Saharanpur as well as Southern Petro-Chemical Industries Corporation Ltd. are not applicable in the present case.

Learned Advocate has relied on the decision of this Tribunal in the case of S.G. Aswani, Calcutta v. Collector of Customs, Calcutta 1985 (19) ELT 187. This decision is not applicable to the present case as the facts are different. The case relied upon by the learned advocate related to condonation of delay in filing the appeal, under Section 129-A(5) of the Customs Act, 1962. In that case the appeal was initially filed before the Collector (Appeals) following the decision of this Tribunal whereas by subsequent decision the Tribunal laid down that such appeals against the order of the Additional Collector should be filed before the Tribunal. It was under these circumstances that delay in filing the appeal was condoned by the Tribunal by virtue of power conferred under Sub-section (5) of Section 129-A of the Customs Act. Whereas there is provision in that section to condone the delay in filing an appeal, there is no such statutory provision for condoning the delay in filing the refund claim under Rule 11 of the Central Excise Rules, 1944. The learned Advocate has also relied on the Tribunal's decision reported in 1986 (23) ELT 174 in the case of Peria Karamalai Tea and Produce Co. Ltd. It is true that in this decision dated 21.11.85 this Tribunal held that the time-limit should be computed from the date of submission of the claim to the Superintendent. We have also a contrary decision of this Tribunal in the case of Hindustan Motors Ltd. v. Collector of Central Excise and Customs, West Bengal, Calcutta reported in 1984 (16) ELT 647 in which it was held that receipt of the refund claim by the Assistant Collector after the prescribed time-limit is time-barred although it was filed within the time-limit before the Superintendent of Central Excise for onward presentation to the Assistant Collector. Besides, we have latest decision of the Tribunal, vide Order No. 83/86-C dated 5.2.1986, in the case of Southern Petro-Chemical Industries Corporation Ltd. v.Collector of Central Excise, Madras 1986 (24) ELT 686 which decided to go by the practice prevailing during the relevant period, failing which to go by the statutory period, computed from the date of filing of the claim before the appropriate Assistant Collector of Central Excise under Rule 11 of the Central Excise Rules/Section 11-B of the Central Excises and Salt Act, 1944. In the present case before us, we have earlier concluded that there was no such practice during the relevant period in the Collectorate of Central Excise,

Kanpur. The matter is, therefore, to be decided according to the provisions of Rule 11 of the Central Excise Rules, 1944.

12. Rule 11 specifically provides that refund claim should be filed before the Assistant Collector of Central Excise within six months from the date of payment of duty. The provision of this rule should be interpreted strictly. Following the judgment of the Supreme Court in the case of Polstar and Co. Ltd v. Addl. Commissioner of Sales Tax,' New Delhi (AIR-1978-SC-897) it was held by this Tribunal in Southern Petro-chemical Industries Corporation Ltd. v. Collector of Central Excise, Madras (cited supra) that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absent, unreasonable, unworkable or totally irreconcilable with rest of the statute. In Rule 11, as quoted supra, there is no ambiguity in its language and there is no scope for any doubt. In this case there is also no such situation as stated herein, warranting a different meaning than conveyed by the language of this Rule. The statutory provision laid down in the rule that refund claim should be filed before the Assistant Collector within six months from the date of payment of duty is, therefore, mandatory. There is no provision in this statute to relax the provision that the claim should be preferred within six months before the Assistant Collector. This statutory provision was binding on the Central Excise authorities who administered the Central Excise Act and the Rules framed thereunder, lit was held by the Hon'ble Supreme Court in the case of Miles India Ltd. v. Assistant Collector of Customs in civil appeal No. 1633 of 1984 decided on 6.4.1984 1985-ECR-289-(SC) that the customs' authorities, acting under the Act, were justified in disallowing the claim for refund as they were bound by the period of limitation provided therefor under Section 27(1) of the Customs Act, 1962. This is the latest judgment of the Hon'ble Supreme Court confirming the position that quasi-judicial authorities cannot condone the delay in filing the application for refund. They -are bound by the period of limitation. In the present case, the Assistant Collector received the refund application after the expiry of statutory period of six months from the date of payment of duty. The Assistant Collector was, therefore, justified in rejecting the claim as time-barred under Rule 11 of the Central Excise Rules, 1944.

13. In view of the foregoing discussions, we set aside the Order-in-appeal No. 339-CE/APPL/KNP/80 dated 24.9.83 passed by the Collector of Central Excise (Appeals), New Delhi and allow the appeal filed by the Department.

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