

Collector of Central Excise Vs. Binod Mills Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-27-1986

Reported in : (1987)(10)LC255Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Binod Mills Co. Ltd.

Judgement :

1. Brief facts of the case are that the respondents manufacturer of cotton yarn and cotton fabrics - were served with a show cause notice dated 17-8-1983 for demanding an amount of Rs. 7570.78p as being a short-levy arising during the period 1-1-1978 to 23-11-1979 on the ground that the respondents had opted for payment of duty on yarn in accordance with the procedure prescribed under Rule 49A of the Central Excise Rules, 1944. According to this Rule the duty on cotton and cellulosic spun yarn used in the manufacture of cotton fabrics was permitted to be paid at the time of removal of cotton fabrics. In addition to the yarn, duty interest at the rate of 1.5% of such duty was required to be paid if the fabrics were cleared at the grey (unprocessed) stage and interest at the rate of 3% was chargeable if the fabrics removed were processed. The respondents had also filed a classification list showing levy of interest at 1.5% on calendered fabrics. Later on, it appeared to the Excise authorities that interest was chargeable at the rate of 3% since calendered fabrics were processed fabrics.

The original authority confirmed the said demand, setting aside the plea of time bar taken by the appellants before that authority, on the ground that the

respondents opted for the procedure under Rule 49A and therefore, there was a contractual obligation to fulfil all the conditions prescribed in the said rule. The time bar would not operate in the case of contractual obligation.

In appeal before the lower appellate authority, the respondents succeeded on the ground of time bar. Learned Collector's (Appeals) observations are that "the views expressed by the lower appellate authority are not correct inasmuch as short levy or short-payment, if any, even under Rule 49A would be covered by the time limit prescribed under the then Rule 10 (now Section 11 A)".

2. Learned SDR appearing for the appellant-Collector of Central Excise, Indore- has urged that recovery of interest under Rule 49A is not a duty and therefore, application of the provisions of the erstwhile Rule 10 or Section 11A now is inappropriate. Those provisions apply only to duty of excise whereas what has been prescribed in Rule 49A is interest on duty payable on the yarn but collected subsequently along with the fabric.

3. Shri K.K. Kapoor, learned consultant for the respondents, on the other hand, reiterated that the provisions of Section 11A would apply in the instant case as upheld by the Collector (Appeals). He invited attention to the expression "yarn duty payable" occurring in conditions (1) and (2) of Rule 49A. This expression according to the learned Consultant, pointed out to the fact that appropriate duty plus the interest as a whole is nothing but duty and recovery thereof was, therefore, actually governed by the provisions of Section 11 A. The learned consultant further pleaded that even if it is accepted that interest was not duty in the instant case and Section 11A was not the governing provisions for recovery of short-payment of such interest then the provisions of Limitation Act would apply and that would be 3 years from the date of short-payment. In that view also he submitted that the demand of the sum was time barred and the appeal is, therefore, liable to be rejected.

Replying to the learned consultant's pleas, learned SDR submitted that this Tribunal is not competent to apply the provisions of the Limitation Act. Provisions of that Act can be invoked only in a court of law. This has been held so by the Tribunal itself in its order No.R-42/85-NRB in reference application No. 57/S5-NRB

in appeal No. 548 of 1980 (NRB). Relying on this decision of the Tribunal, learned SDR has submitted that the benefit of the provisions of the Limitation Act could not be given to the respondents in the proceedings before the Tribunal.

4. I have carefully considered the pleas advanced on both sides. I agree with the plea of the learned SDR that the provisions of Section 11A would not apply inasmuch as the interest recovered under the provisions of Rule 49A cannot be treated as duty. Duty under the Central Excise Rules, 1944 has been defined as a duty of excise under Section 3 of the Central Excises and Salt Act, 1944. Duty of excise under Section 11A of the Act would obviously mean a duty imposed under the Act that is in Section 3 of the Act. The expression "yarn duty payable" referred to in conditions (1) and (2) of Rule 49A is somewhat loose expression but is made explicit by the subsequent clause (b) in those conditions where it has been referred to merely as interest. The limitation provided under Section 11A would not apply to recovery of short-payment of interest under Rule 49A.5. As regards the second plea regarding non-applicability of limitation under the general law of limitation before the Tribunal and the decision of the Tribunal mentioned supra in this connection by the learned SDR, I would observe that where a time limit has been provided in respect of any specific area in the Central Excises and Salt Act itself the Tribunal would be governed by the limitation provided therein since the Tribunal is also a creature of that Act and cannot go beyond the provisions of that Act. In the Tribunal's decision mentioned by the learned SDR, the issue before the Bench was the condonation of time limit in filing a reference application. In respect of this, there is already a provision in the Act itself. Therefore, there could be no question of applying the provisions of Limitation Act as has been rightly held by the Tribunal in the decision quoted earlier. In the instant case, however, the situation is different. There is no time limit provided in respect of recovery of short-payment or refund of excess payment of various dues arising under the Central Excise Law except in respect of duty of excise. The question, therefore, is whether in such circumstances the Tribunal can apply the General Law of Limitation or not in such instances. I observe that there are instances where provisions of general limitation under the Limitation Act are applied by the departmental authorities for giving certain amounts of refund to the assesseees, such as refunds of licence fee applications, refund of balance deposits in PLAs, refund of deposits of

compounded levy on khandsari sugar and refunds of. double duty charged inadvertently on the same goods. In such instances, provisions of limitation provided for refunds in Section 11-B of the Act are made inapplicable. I find support from a decision of the Tribunal reported in 1983 ELT 1273-CEGAT-East Regional Bench wherein it has been held that "if the duty was charged on the second set of goods which in fact were non-existent and have never been imported, the amount of duty collected in such cases has to be treated as a deposit with the Government and not as duty and, therefore, the time bar of Section 27 of the Customs Act would not apply to the refund of such a deposit." If the provisions of general law of limitation can be applied to the aforesaid cases of refund, there is no reason as to why those provisions cannot be made applicable in the cases of short-recoveries.

In this view, the demand would be time barred inasmuch as the notice was issued beyond 3 years of the date of short-payment which is the limitation provided in the Limitation Act. Since an appeal lies to the Tribunal in terms of Section 35B of the Act against a decision of the Collector (Appeals) and the appeal is actually now before the Tribunal, the Tribunal is bound to give a decision. In view of the above finding, the appeal is dismissed. This is, however, without prejudice to any proceedings that the Department may like to launch in a court of law under any other provisions of any Act other than the Central Excises and Salt Act, 1944.

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