

Anup Engineering Limited Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-15-1987

Reported in : (1987)(12)ECC56

Appellant : Anup Engineering Limited

Respondent : Collector of Central Excise

Judgement :

1. The revision application filed before the Government of India has been transferred to the Tribunal and is being treated as an appeal.

2. The appellants manufacture engineering goods falling under Tariff Item 68. They also undertake the activity of job 'work for fabricating the goods from raw materials supplied by the customers. On 30-4-1975, the Government issued a Notification No. 119/75 exempting goods' falling under T.I. 68 and manufactured on job work basis from payment of duty in excess of the duty calculated on the job charges. In view of the Notification and the Explanation the appellants started paying duty on job charges in respect of the goods manufactured from the materials supplied by the clients. A show cause notice was issued on May 1976 directing the appellants to show cause as to why Central Excise duty should not be recovered on the value of the raw materials supplied in addition to the duty paid on the job charges. The matter was decided by the Assistant Collector upholding the contention of the appellants that the classification of the product is under T.I. 26AA(ia). The appellants, therefore, preferred a refund claim as noted below:-----Claim Amount of

Period	Date of receipt	No.	Refund claimed-	of claim	by	Divi-	sional
Office.						(1)	(2)
(4)						(3)	
						6.	

Rs. 44,486.76 June, '77 - 7th Nov., '77----- The Assistant Collector held that the claim relating to the period" from 6-8-1977 to 7-11-1977 were alone in time. The refund claim amounting to Rs. 1,33,003.06 for the period 1-3-1975 to 3-8-1977 was rejected as time barred. On an appeal the order was modified and the Assistant Collector was ordered to entertain the claim for the period from 26-6-1976 to 5-8-1977. The Appellate Collector did not allow the claim for the period 1-3-1975 to 22-6-1976.

3. Shri G.S. Khambholja, Consultant, submitted that the period specified under Rule 11 (as it then stood) would not be applicable because the refund arose consequent to the orders of the Assistant Collector on the classification. He, therefore, argued that the rejection of the refund claim was not proper.

4. Smt. V. Zutshi, SDR. stated that the omitted rule envisaged the filing of an application for refund before the expiry of six months from the date of payment of duty. In this case as the appellants did not file the refund application within period the claim was rightly rejected as barred by time. She emphasised that there was no protest by the appellants at the time of making the payment and their letter registering a protest would not operate retrospectively. For the purpose of understanding the controversy we have reproduced below the omitted rule as it stood at the relevant time: "Claim for refund of duty - 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: Provided that the limitation of six months shall not apply where any duty has been paid under protest.

Explanation - Where any duty is paid provisionally under these rules on the basis of the value or the rate of duty, the period of six months shall be computed from the date on which the, duty is adjusted after final determination of the value or the rate of duty, as the case may be.

(2) If On receipt of any such application the Assistant Collector of Central Excise is satisfied that the whole or any part of the duty paid by applicant should be refunded to him, he may make an order accordingly.

(3) Where, as a result of any order, passed in appeal or revision, under the Act, refund of any duty becomes due to any person, the proper officer may refund the amount to such person without his having to make any claim in that behalf.

(4) Save as otherwise provided by or under these rules, no claim for refund of any -duty shall be entertained." In this case the refund application was filed on 23-1-1978 for the period March 1975 to December 1975 and' on 6-2-1978 for the period from January 1976 to June 1976. The omitted rule contemplates the filing of an application before the expiry of six months from the date of payment of duty.

5. We do not accept the argument that the payment was made under protest. There is no evidence that the appellants staked their claim for refund at any time prior to 23-6-1976. The material portion of the letter has been extracted by the Appellate Collector which reads as follows: "When we prepare a forged shape which is a product of tariff item No. 26AA(ia) and which is also prepared from a product of the same tariff item, we are not required to pay any duty on this article under notification No. 75/67 dated 20-6-1967, or tariff item No. 68.

We reserve out right to claim refund of the duty already paid by us and which may be paid upto the time of the decision to be taken in this regard." It is manifest therefrom that the appellants have lodged their protest only from 23-6-1976 and have expressed their reservation to claim a right of duty already paid. We do not accept the contention of the appellants that the letter should be read as a retrospective protest.

If there is no protest at the time of making the payment the appellants cannot get over the restrictions set out in Rule 11.

6. We are also not convinced with the arguments that the refund arose as a consequence of the orders of the Assistant Collector on the classification and that it can be granted even without a formal application for refund. The only situation

when a person would be entitled to refund without this having to make a claim in that behalf is specified in Rule 11(3). From the rule it is clear that the refund should become due as a result of any order passed in appeal or revision under the Act. The order on the classification list by the Assistant Collector cannot be order passed in appeal or revision. So, the contention that the appellants are entitled to a refund even without an application cannot be accepted. We are not impressed with the submissions of Shri C.S. Khambholja, Consultant, that the refund arise as a consequential relief on the orders regarding classification.

Sub-rule (3) of Rule 11 specifies a refund being issued as a consequence to the orders in appeal or revision because in such a contingency the decision of appeal or revision would have a material bearing in respect of the refund. Since the facts in the present case are totally different the appellants cannot urge that they are entitled to a refund even without making an application. Their application is admittedly beyond the period prescribed under the Rule and was rightly rejected by the Appellate Collector. In the result the appeal fails and is rejected.

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