Commissioner of Central Excise Vs. Quality Steels and Forgings Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-13-2003

Judge : S T C.

Appellant : Commissioner of Central Excise

Respondent : Quality Steels and Forgings Ltd.

Judgement :

1. Shri Uma Shankar, learned S.D.R. appeared for the Department None is present on behalf of the Respondent. The learned S.D.R. reiterates the ground taken in the departmental appeal which is as follows: "Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in Sub-section (2)." In this case the claim for refund filed on 30.8.92, is clearly time-barred having been made after six months of payment of duty as the duty was not paid under protect. The Supreme Court in its judgment in the case of Mafatlal Industries Ltd. v. UOI, [1997 (89) ELT 247 (SC)] has held as under, "It is then pointed out by the learned Counsel for the petitioners-appellants that if the above interpretation is placed upon amended Section 11B, a curious consequence will follow. It is submitted that a claim for refund has to be filed within six months from the relevant date according to Section 11B and the expression 'relevant date' has been defined in Clause (B) of the Explanation appended to Sub-section (1) of Section 11B to mean the date of payment of duty in cases other

than those falling under Clauses (a), (b), (c), (d) and (e) of the said Explanation. It is submitted that Clauses (a) to (e) deal with certain specific situations whereas the one applicable in most cases is the date of payment. It is submitted that the appellate/revision proceedings, or for that matter proceedings in High Court/Supreme Court, take a number of years and by the time the claimant succeeds and asks for refund, his claim will be barred; it will be thrown out on the ground that it has not been filed within six months from the date of payment of duty. We think that the entire edifice of this argument is erected upon on incomplete reading of Section 11B. The second proviso to Section 11B (as amended in 1991) expressly provides that 'the limitation of six months shall not apply where any duty has been paid under protest'.

Now, where a person proposes to contest his liability by way of appeal, revision or in the higher courts, he would naturally pay the duty, whenever he does, under protest. It is difficult to imagine that a manufacturer would pay the duty without protest even when he contests the levy of duty, its rate, classification or any other aspect. If one reads the second proviso to Sub-section (1) of Section 11B alongwith the definition of 'relevant date', there is no room for any apprehension of the kind expressed by the learned Counsel." Therefore, in view of the above, the Commissioner (Appeals) has erred in holding that since the assessee had filed the refund claim on 30.8.92; as a result of order-in-appeal passed by the Commissioner (Appeals) on 28.4.92, the said claim can not be said to be hit by limitation.

In view of the above the order-in-appeal passed by the Commissioner (Appeals) is not proper, legal and requires to be set aside and suitable order as deemed fit may be passed." 2. After hearing learned S.D.R. and perusal of case records, I find substance in grounds of appeals and accordingly set aside the impugned order and remand the case back to the Commissioner (Appeals) for re-decision according to law after affording an opportunity of hearing to both sides.