

Collector of Central Excise Vs. Ram Nath Ram Kumar

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-12-1987

Reported in : (1987)(12)ECC175

Appellant : Collector of Central Excise

Respondent : Ram Nath Ram Kumar

Judgement :

1. This is an appeal filed by the department against the order passed by the Collector (Appeals) Central Excise, New Delhi, allowing a claim for refund of Rs. 1,573.34, being the advance deposit made under compounded levy scheme by the respondents which was rejected by the Assistant Collector of Central Excise under Rule 11 of Central Excise Rules, 1944 on the ground that the same was preferred after 6 months.

The respondents contended that the claim was return of the deposit and not of duty paid and that limitation under Rule 11 would not apply in their case. The Collector (Appeals) allowed the appeal on two grounds.

Firstly, that the refund sought was of advance deposit made under compounded levy scheme and not of duty paid, and secondly, that in this case limitation under Rule 11 was not applicable and that the general Law of Limitation would apply.

2. Shri Rakesh Bhatia, SDR, appears on behalf of the department and submits that the claim having been preferred after more than one and a half year was

clearly time-barred in terms of Rule 11 of the Central Excise Rules, 1944. Secondly, it is submitted that the departmental authorities have to act within the framework of the statute and the Collector (Appeals) Had erred in holding that the general Law of Limitation applies in respect of such refund claim. In this connection, the department in their appeal, has cited the cases of Afro Asian Association, Bombay v. Collector of Customs, Bombay (1983 ELT 372), and Incheck-Tyre v. Assistant Collector of Customs and Ors. (1979 Cencus 360-D).

3. Shri Gopal Prasad, Learned Consultant, fairly concedes that so far as the point regarding limitation is concerned, it is now well settled as a result of various decisions of the Tribunal as well as the Supreme Court that the departmental authorities which are creatures of the statute, are bound by the provisions of the statute and that they cannot go beyond the Act and the Rules. It is however, submitted that the Collector (Appeals) was right in holding that in this case the point at issue is refund of advance deposit made under the compounded levy scheme and not of duty paid. In this connection, Shri Gopal Prasad refers to Rule 92B which provides for adjustment of actual duty payable against the amount required to be deposited in advance. It is submitted that sub-rule (4) of Rule 92B itself provides for adjustment or refund and therefore, Rule 11 cannot come in as a bar against claims for such adjustment or refund. Shri Gopal Prasad refers to the decision of this Tribunal in the case of Niranjana Battery (1984 ECR 455) in which it was held that such deposits are in the nature of only provisional payment, and therefore, Rule 11 would not apply.

4. The facts of the case and the submission made have been carefully considered. It is observed that the Collector (Appeals) granted the appeal on two grounds. Firstly, that the general Law of Limitation, which extends to three years, applies to this case, and secondly, that in this case the amount sought to be refunded is not of duty but merely advance deposit made. So far as the first ground is concerned, the position is well settled in view of the decision of the Supreme Court in the cases of Sakuru v. Tanaji 1985(22) ELT 327 and Miles India Ltd. (1985 ECR 289). It is clear that departmental authorities as well as this Tribunal are bound to act within the framework of the statute. The conclusion of the Collector (Appeals) in this regard has to be rejected.

5. However, coming now to the second point as regards the nature of the amount sought to be refunded, and the applicability Of Rule 11 of Central Excise Rules, 1944, it is observed that Rule 92B of Central Excise provides for a scheme for discharge of duty liability under which a sum has to be deposited in advance of the date on which the unit commences manufacturing operation, and it has to be adjusted at the end of such operations. Thus, the provision for such adjustment and refund is made under Rule 92B itself. The authority for refund is contained in sub-rule (4) of Rule 92B and no time limit has been prescribed therein for the making of such adjustment or refund. In view of this fact, it is not necessary to look for the authority to grant the refund elsewhere in the Rules. Clearly, the pre-deposit is only a provisional payment of amount against which the actual liability has to be adjusted. Rule 11 has no applicability in such cases. The ratio of the Tribunal in the case of Niranjana Battery (supra) is also in favour of the respondents. On this ground therefore, the order of the Collector (Appeals) has to be upheld.

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