Commissioner of Central Excise Vs. Atul Inds.

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SooperKanoon Citation : sooperkanoon.com/33669

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-05-2004

Reported in : (2004)(168)ELT353Tri(Mum.)bai

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Atul Inds.

Judgement :

1. The issue relates to the application of limitation in respect of refund claim filed by the respondent. The refund claim was filed on 21.1.1999 for the amount of Rs. 4 lakhs paid vide TR6 challans dated 12.11.1997 and 19.11.1997. It is also found that the amount of Rs. 2 lakhs claimed as paid by the claimant is in fact paid by another unit viz. M/s. Dharam Inds. Since the refund claim was filed by the claimant on 21.1.1999 i.e. after the expiry of 6 months from the date of payment of duty, the same was alleged to be time barred under Section 11B of the Central Excise Act. While the AC rejected the refund claim not considering the said payment to be a deposit for future payment, the Commissioner (Appeals) allowed the appeal of the assessee on the ground that the appellants had fixed the refund application within the period of 6 months from the date of issue of adjudication order dated 18.11.1998 in their favour on merits.

2. The grounds in the revenue's appeal claim that since the amount was not paid under protest, limitation of 6 months would apply. Hence the claim was time

barred.

3. Heard both sides. I have considered the contents of the order in appeal and the grounds urged in revenue's appeal. The limitation of 6 months under Section 11B of the Act applies to refund of duty. The claim is to be made before the expiry of 6 months from the relevant date. The "relevant date" is defined under Sub-clauses (a) to (f) of Clause B of explanation to Section 11B(5) of the Act. The payments made by way of deposit by the appellants cannot be attributed to any particular goods in respect of which the said payment was due. It is an admitted position that the payment was obtained by the departmental authorities as a "deposit" towards the potential liability that might have generated as a result of investigation undertaken. No such duty liability having been confirmed against any particular goods cleared by the appellants, the entire payment is only a "deposit" and once the payment is classified as "revenue deposit" it is well settled law that the provision of Section 11B shall not apply for claiming its refund.

The present case also is a case of refund of revenue deposit and not the refund of duty. Even the amount deposited during the provisional assessment prior to notification No. 45/99 CE(NT) dated 25.6.1999 is not governed by Section 11A or Section 11B as held by the Hon'ble Supreme Court in the case of Mafatlal Inds. reported in 2002 (83) ECC 85 = 1997 (89) ELT 247 (SC).

4. Therefore I find no merit in the revenue's appeal. The same is rejected.