

Collector of Central Excise and Vs. Associated Cements Corporation

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-27-1987

Reported in : (1987)(12)LC609Tri(Delhi)

Appellant : Collector of Central Excise and

Respondent : Associated Cements Corporation

Judgement :

1. These two appeals relate to the common issue involving excess production incentive granted under exemption Notification No. 198/76-CE dated 16-6-76. The same are, therefore, disposed of by this common order.

2. In both these cases, the claims for refund of duty in terms of the above Notification were received by the Assistant Collector of Central Excise after expiry of six months from the dates of payment of duty, but within the period of six months from the date of the approval of the declaration of base clearance. The refund claims were rejected by the Assistant Collector of Central Excise as barred by limitation under Rule 11 of the Central Excise Rules, 1944. Aggrieved by the said orders, the appellants filed appeals, which were allowed by the Collector (Appeals). Hence, these present appeals before us by the Revenue.

3. Arguing for the Revenue, Shri Rajhans, learned J.D.R. has relied upon the decisions of this Tribunal in the case of Namdang Tea Co.

Ltd., Calcutta v. Collector of Central Excise, Shillong, reported in 1984 (15) ELT 467 and in the case of Collector of Central Excise, Kanpur v. Prag Vanaspati Products, Aligarh, 1987 (27) ELT 337 (Tri.), vide Order No. 515/1986-C dated 12-7-86 in Appeal No. ED/SB/84/84-C. He also reiterated the grounds of appeals.

4. The learned advocate Shri P.G. Gokhale relied on the decisions reported in 1983 (14)-ELT-2426 (CEGAT)-Neelamalai Tea/Coffee Estates and Industries Ltd., Nilgiris v. Collector of Central Excise, Madras and K.B. Foams Private Ltd.. Bangalore v. Collector of Central Excise, Bangalore and stated that the present cases were fully covered by these two decisions. Arguing in Appeal No. ED/SB/1555/83-C he stated that by their letter dated 17-3-77 addressed to the Assistant Collector of Central Excise, Nadiad, the appellants intimated to the Assistant Collector that pending issue of certificate of base clearance and completion of formalities, they were paying duty at full rate under protest. The Assistant Collector and the Collector (Appeals) had not considered this point. In reply to this argument, Shri Rajhans has stated that the protest letter was addressed to the Assistant Collector of Central Excise, Nadiad and as a result other officers did not know about this letter. So, the time limit of six months would apply.

5. We have considered their arguments. Out of the two decisions relied upon by the J.D.R., the case of M/s. Prag Vanaspati Products is not relevant to the facts of the present cases. The present cases relate to the refund under the excess production incentive scheme whereas in the other case the claim did not relate to this scheme. It was a case of normal refund claim to which the time limit of 6 months from the date of payment of duty was applicable. In the decision dated 20-12-83 reported in 1984 (15) ELT-467, this Tribunal, however, held that refund claim filed beyond a period of six months from the date of payment of duty had been rightly rejected as time barred under Rule 11 of the Central Excise Rules.

6. The two decisions cited by the counsel for the appellants are in their favour. In the decision reported in 1983 (14) ELT-2426, this Tribunal held that unless the Assistant Collector had fixed their base period and base clearances, the appellants were neither in a position to avail of the concession as per Notification No. 198/76-CE on their own nor quantify their refund claim. They could not even

know as to when exactly their excess clearances would start. Since the Assistant Collector took time in giving his approval and the appellants soon thereafter quantified the amount of concession admissible to them and filed a specific refund claim, their refund claim was well in time and it was not necessary for them to pay duty under protest. Accordingly, it was held, the refund claim was not barred by limitation. Similarly, in the case of K.B. Foams Private Ltd., 1985 (19) ELT-476, this Tribunal held that in the case of production incentive under Notification No. 198/76-CE the period of limitation for refund should run from the date of approval of base clearance and not from the date of payment of duty. This decision is dated 14-11-84. In the recent past, this Tribunal has held similar view in several other cases. We have no reasons to take a different view. Respectfully following these decisions, we uphold the impugned orders in the present cases and dismiss these two appeals.

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