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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-05-1987

Reported in : (1987)(12)LC443Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : C.E.C. of (i) Ltd.

Judgement :

1. This is an appeal by the Revenue against the order of the Collector (Appeals), Central Excise, New Delhi dated 1-2-1985.

2. The respondents preferred a refund' claim for Rs. 8,65,965.06. They have purchased from suppliers at Patiala, Bombay and Bangalore duty paid electrolytic copper wire bars. The goods were used in the manufacture of electric motors and transformers in terms of Notification No. 151/77-CE dated 18-6-1977 during the period 18-6-1977 to 2-2-1979.

3. A show cause notice was issued on 18-10-1979 asking them to show cause as to why refund claim should lot be rejected as Chapter X procedure was not followed. The respondents contended that they have maintained the records meticulously and they have not violated the requirements of Notification 151/77-CE. The C.T. 2 Certificates were issued within the framework of L-6 Licence issued to them.

4. The Asstt. Collector held that the respondents failed to procure non-duty paid goods from their suppliers though they have observed other formalities and got C.T. 2 Certificates. He has stated that there is no provision under the rules to refund the duty which was paid at the other end on the goods which are used/consumed under the concession along with Chapter X. Chapter X never envisages to pay refund if the goods used were duty paid. On appeal, the Appellate Authority was of the' view that the C.T. 2 issued from the receivers were not accepted fit the suppliers end. The respondents had maintained all registers and records properly and the receipts have been duly verified by the officers. In the circumstances,-he held that the rejection of the claim was not proper. He remanded the matter to the Asstt. Collector to grant refund claim examining the aspect of time bar alone.

5. Shri 3.N. Nigam, SDR urged that the refund could be accorded only to the party who had paid the amount. The duty was actually paid to the department by the suppliers and not by the respondents. He relied on the rulings reported in 1977 ELT 3-65 (Cal.) [Akhil Bandav Chemicals Industries (P) Ltd. v. Union of India and Ors.] and 1977 ELT 3-157 (Union of India and Other v. Silchar Electric Supply Company Ltd.). He urged that the Asstt. Collector had no jurisdiction to grant the refund. The respondents failed to observe the procedure set out in Rules 192 to 196. He' argued that under the circumstances, the refund was rightly rejected by the Asstt. Collector and that the order passed by the Appellate Authority was not justified.

6. On behalf of the respondents Shri D.R. Kohli, Consultant submitted that Notification 151/77-CE referred to observance of Chapter X procedure. The respondents had substantially followed Rules 192-194. If there was any omission, it was due to the non-cooperation of the department. The department did not honour the C.T. 2 issued. In 1987 10 E.G.R., 385 (M/s Sundram Fastners Ltd. v. Collector of Central Excise, Madras), the Tribunal had held that where the goods had to be properly accounted for a particular end use has to be held to be directory in nature and in the facts and circumstances of the case and non-compliance with the Chapter X procedure in entirely, therefore, did not vitiate the appellant's claim therein.(S.C.) (Commissioner of Sales Tax, UP v.Auriaya

Chamber of Commerce, Allahabad), the Supreme Court has observed that under Article 265, the Constitution enjoined that no tax shall be levied or collected except by the authority of law. The State had no right to that money and was liable to refund the same. The learned Consultant also urged that the respondents had executed the necessary bond and have stored the goods as required by the provisions. The returns under R.T. 11 were not submitted because it was not necessary for the goods. On the question of time bar, he stated that the tax was collected without authority and hence the same should be refunded. He placed reliance on the following rulings:-(S.C.) (Commissioner of Sales-Tax, U.P., v. Auriaya Chambers of Commerce, Allahabad).(S.C.) (Madras Port Trust v. Hymanshu International).

(c) 1981 E.L.T. 190 (Del.) (Vazir Sultan Tobacco Co. v. Union of India).

8. He drew our attention to Section 11B and submitted that the refund could be granted to "any person". He also placed reliance on the rulings reported in 1981 E.L.T. 257 (Standard Batteries Limited v.Appraiser, Appraising Deptt. and Ors.). 1981 E.L.T. 478 (Madras Aluminium Co. Ltd. and Anr. v. U.O.I.). 1983 E.L.T. 1763 (U.O.I, v. New India Industries Ltd., Baroda). 1980 E.L.T. 735 (Hyderabad Asbestos Cement Products Ltd. and Another v. U.O.I. and Ors.).

9. The point for consideration in this appeal is whether the respondents are entitled to the refund? Notification 151/77-CE reads as follows:- "Electroiytic Copper Wire bars falling under Item No. 26A when used for the manufacture of the articles specified in the Schedule annexed hereto are exempt from the whole of the duty.

Provided that the manufacturer of the articles specified in the schedule annexed hereto shall follow the procedure set out in Chapter-X of the Central Excise Rules, 1944.

10. The respondents admittedly manufacture electric -motors of 5 K.W.and above and transformers of rating of 150 K.V.A. and above. They have purchased electrolytic copper wire bars from the suppliers of Patna, Bombay and Bangalore. Sh. Kohli drew our attention to the communication of the Inspector, Central Excise,

Allahabad dated 28.4.78 who certified that the respondents were manufacturing motors and that they were authorised to purchase copper wires and strips free of excise duty at the point of clearances from the stores of production. M/s Bhandari Mettalurgical Corpn., in their letter dated 23.2.79, addressed to the respondents stated that Notification 151/77-CE had been rescinded by Notification 19/79 dated 2.2.79 and hence the clearances in respect of products electrolytic copper bar strips, Paper covered strips, Bare copper wire and paper covered copper wire manufactured could not be allowed to be cleared as exempted from payment of excise duty. They had intimated the respondents that they were unable to send any material without payment of excise duty. M/s Electra Sales Conductors by their letter dated 25.4.78 have stated that the Asstt. Collector, Central Excise, Bangalore declined to allow the exemption of Excise Duty taken on bar copper strips/wires against issue of CT-2 Certificate. In view of the contention of the Central Excise Collectorate at Bangalore, they had no other alternative but to charge duties as applicable at the time of delivery. Shri Kohli stated that the respondents had executed a bond as required by the rules and a C.T. 2 certificate was also issued for their produces. According to him, if the department had raised untenable objections to their availing the benefit of notification 151/77-CE, the refund should be accorded to them.

11. We are not inclined to accept the contentions raised on behalf of the respondents. As pointed out earlier Notification 151/77-CE exempted electrolytic copper wire bars from the whole of the duty provided the manufacture of the articles specified in the schedule followed the procedure set out under Chapter-X of the Central Excise Rules, 1944.

Chapter-X, among others Rule 192 required an application to the Collector being made setting out the admitted annual quantity of excisable goods required and the purpose for and the manner in which it was intended to use them and declare that the goods would be used for such purpose and such manner. Of course, the respondents have been given an L-6 licence. Rule 193 specifies that the goods obtained under Rule 192 shall be transported immediately from the place of procurement to the applicants premises and should be packed in such manner as the Collector may direct and the weight of the goods should be marked on the

packages. We do not know whether the respondents have complied with this requirement. Rule, 194 contemplates that the goods shall be stored in a storeroom and that the applicants should maintain a register in the proper form snowing the quantity of goods received and the quantity used in the industrial purposes. Though, it was urged that the respondents had maintained such a register, yet the same had not been produced before the concerned authority. Further Rule 194(3) prescribed that within 7 days after the close of each month a monthly return should be submitted showing the nature and quantity of other goods and the commodities manufactured with such other particulars. Admittedly, no such return was filed to enable the officer to verify the correctness of the manufacture. The Asstt. Collector was, therefore, right when he stated that the respondents have not complied with the provisions of Chapter-X. The Appellate Authority has stated that the respondents have maintained all the registers and records properly and the receipts have been verified by the officer on duty. But the Appellate Collector has not stated anything about the failure to furnish the returns. The contention that the procedure could not be strictly followed due to hurdles created by the department, is also not tenable from the facts of the case. The two letters furnished by the respondents indicate that the departmental authorities have drawn the attention of the suppliers to the grounds on which the C.T. 2 Certificates were not accepted. In regard to letter dated 23.2.79 by M/s Bhandari Electric Corporation, it was pointed out that at the time of the letter, the notification had already been rescinded. The other, letter of M/s Elektra Sales and Conductors also referred to the ground on which the Asstt. Collector, Central Excise, Bangalore refused to allow the exemption. They wanted the respondents to send the documentary evidence to convince the authorities to allow/the exemption. We do not know whether the respondents sent any documents, and pursued their claim for exemption. So, on the facts of the case, it is manifest that the respondents have not complied with the provisions of Chapter-X envisaged under the notification 151/77-CE and as such are not entitled to the refund.

12. There is yet another aspect which has to be adverted to. The duty was admittedly paid not by the respondents but by the suppliers directly to the department. The respondents merely paid a price for the goods purchased by them. Chapter-X contemplated receipt of non-duty paid goods. If the suppliers had

paid the duty for any reason, then the respondents being purchasers cannot claim the benefit of the payment.

The two decisions cited by the SDR are directly on the point. In the case of Akhil Bandav Chemicals Industries (P) Ltd., the Calcutta High Court considered the case of refund by the purchasers who had L-6 licence. Their licence expired on 31.12.68. They applied for renewal.

The C.T. 2 Certificates also which were issued were withdrawn by the Assessing Authority. The licence was subsequently renewed. When they filed on application for refund, it was rejected on the grounds that the duty was paid not by the petitioners but by the two companies to the excise authority. The Calcutta High Court has observed, "An application for refund of duty can only be made to a person who has paid it to Excise authority and such an application must also be made with a year from the date of such payment under Rule 11 as amended by the Rules, 1733 of the Central Excise Rules." In paragraph 7, it is stated that "It is true that the excise duty is an indirect tax but as between the petitioner and those two companies the excise duty formed part of the price of those goods and those two companies were liable to pay duty on those goods to excise authorities at the point of removal of those goods from their respective factories. They also paid actual duty liable on those goods to the Excise authorities." In the case of Silchar Electric Co. (cited supra), the High Court has observed in Para 7, "No doubt the excise duty which has been levied on the manufacturer of the product, may be eventually passed on the ultimate consumer or buyer but so far as statute is concerned, the liability for paying the tax is on the manufacturer or producer, as the case may be, and the right to collect the same by the Union of India is only against such manufacturer or producer. In my pointion, therefore, (the plaintiff, who was not- a manufacturer or a producer and who was, therefore, not required to pay any excise duty to Union of India directly is in no position to claim refund from the Union of India because the plaintiff had made no payment to the Union of India)".

13. The above rulings clearly show that the respondents cannot claim the refund because what they have paid to the suppliers, is the price for the goods and the

respondents have not paid any excise duties to the authorities concerned.

14. The decisions cited by the learned consultant have no application to the present facts. In 1981 E.L.T. 257, the Madras High Court had to consider in a Writ Petition "money paid under a mistake of law". In 1981 E.L.T. 478 (Madras Aluminium Co. and Another v. Union of India), it was held that following a Bench decision of the same High Court that the amount will be excess duty payment due to the ultimate customers as and when the claims were made and established by them. The facts of the present case are totally different. It is not a case of refund on money paid under a mistake and the present proceedings have not been initiated by the persons who have paid the duty. In 1981 E.L.T. 478, the Bench decision was also in respect of duty collected illegally. On the facts of the present case, it cannot be said that the ' duty was collected illegally. The Ruling reported in 1980 E.L.T. 735 arose in a W.P. before the Delhi High Court and the issue was whether the petitioner therein could be allowed to unjustly enrich themselves by obtaining the refund of excise duty and additional duty which amount they had already recovered from the consumers. In 1983 E.L.T. 1763 (Union of India v. New India Industries Ltd., Baroda) the Gujarat High Court was considering the issue of refund of duty illegally recovered in a civil proceedings. That decision cannot be of any help to the respondents, herein, since the proceedings herein relate to an application for refund under Section 11 B of the Central Excises and Salt Act, 15. We are also not convinced with the arguments that the excise duty was collected without authority. When the respondents have not followed the main requirement of Chapter-X procedure, it is not open to them to contend that the tax was collected without any legal authority. When the basic requirements of the rules have not 'been followed and when the respondents have not paid the 'excise duty, it cannot be said that they would be entitled to 'the refund. The contention that under Section 11B "any person" can claim the refund is' not acceptable for the Section contemplates "any person" claiming the refund to make an application. Section 113(2) indicates that on receipt of the application, if the Asstt. Collector is satisfied that the whole or any part of the duty paid by the applicant (emphasis supplied) should be refunded to him, he may make an order. This provision proves that it is not open to any individual to come forward with an application for refund but only that person who had paid the duty of excise. If it is a refund claim under

Section 11B, the statutory provision has to be strictly construed and the requirements must be satisfied.

16. We are, therefore, of "he view that the respondents are not entitled to refund. The impugned order cannot be sustained and the appeal is, therefore, allowed.

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