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Court : Mumbai

Decided On : Jan-09-1986

Reported in : (1986)88BOMLR112; 1989(20)LC33(Bombay); 1986MhLJ272

Judge : Bharucha, J.

Appeal No. : Writ Petition No. 623 of 1981 (Original Side, Bombay)

Appellant : Associated Aluminium Industries Pvt. Ltd.

Respondent : Union of India (Uoi)

Disposition : Petition dismissed

Judgement :

Bharucha, J.

1. The principal argument in this petition is that there is invidious discrimination between manufacturer-exporters following the procedure laid down under Rule 12 of the Central Excise Rules as contrasted with those following the procedure under Rule 13 thereof. It is necessary to advert to these provisions immediately. Under Rule 12 the Central Government may, from time to time, by notification in the Official Gazette, grant rebate of duty paid on excisable goods, if exported outside India, to such extent, and subject to such safeguards, conditions and limitations as regards the class of goods, destination, mode of transport, and other allied matters as may be specified therein. Rule 13 provides that goods, other than those falling under Item Nos. 5 and 12 of the First Schedule to Central Excise and Salt Act, may be exported outside India without payment of duty from a ware-house or a licensed factory, provided the export is made in accordance with the procedure set out in Chapter IX of the Rules and the owner enters into a bond in the proper form, with such surety or sufficient security, and under such conditions as the Collector approves, in a sum equal at least to the duty chargeable on the goods, for the due arrival thereof at the place of export and export therefrom and such bond shall not be discharged unless the goods are duly exported or are otherwise accounted for to the satisfaction of the Collector.

2. It is the petitioners' case that between October 1976 and October 1977 they manufactured aluminium products and exported the same following the procedure prescribed by Rule 13 and that thereafter, by reason of representations made to them by the Excise authorities, they made such exports following the procedure prescribed by 12. Upon following the procedure prescribed by Rule 12, the petitioners were granted full rebate of the excise duty paid by them.

3. On July 11, 1977 the Assistant Collector of Central Excise, Bombay, served upon the petitioners a notice of demand in the sum of Rs. 1,27,236.06 Ps. for excess rebate granted as mentioned therein. On July 27, 1977 the petitioners were served with a notice issued under Rule 10 to show cause why they should not be required to pay the aforesaid amount which was alleged to have been erroneously refunded. On September 15, 1977 the petitioners replied to the show-cause notice. On August 4, 1978 the Assistant Collector found

that the petitioners were not entitled to rebate of the whole of the excise duty which had been paid by them and that they were entitled to rebate only at the rates prescribed in a notification dated May 17, 1969. He, therefore, ordered the petitioners to refund the sum of Rs. 1,20,055.35.

4. The petitioners preferred an appeal which was, on November 27, 1979, dismissed. The petitioners then preferred a revision application to the Central Government. On August 11, 1980 it was rejected. On April 2, 1981 a letter of demand for the sum of Rs. 1,20,055.35 Ps. was served upon the petitioners.

5. The argument of Mr. Mehta, learned Counsel for the petitioners, was that had the petitioners followed the procedure prescribed under Rule 13, that is to say, had they exported the goods under bond, they would have been required to pay no excise duty thereon; but, having employed the procedure under Rule 12, they became entitled to a rebate only of such portion of the excise duty paid by them as was permitted by the said notification. In his submission, the said notification should, therefore, be struck down.

6. The argument proceeds upon the basis that the procedure under Rule 12 and that under Rule 13 were open to the petitioners. When the petitioners opted to follow the procedure under Rule 12 they knew, or must be deemed to have known, that they would be entitled to rebate only to such extent as the Central Government by notification prescribed, whereas if they had followed the procedure under Rule 13 they would pay no excise duty. There being a choice of procedure it cannot be said that there was any discrimination.

7. Mr. Mehta said that the petitioners switched from the procedure under Rule 13 to that under Rule 12 by reason of the representations made by the Excise authorities. This is disputed. In fact, in the affidavit of the respondents it is said that 'the facility to export the goods under the provisions of Rule 13 was admittedly not extended to the products of aluminium.' The order in revision also sets out that it was the petitioners' own submission that there was no facility for exporting aluminium products under bond at the relevant time. There is no merit in the submission that the petitioners were compelled to utilise the procedure under Rule 12 by the representations of the excise authorities.

8. Mr. Mehta submitted that the proceedings commenced with the show-cause notice dated July 27, 1977 under Rule 10 had lapsed. Rule 10 as it read on July 27, 1977 was substituted on August 6, 1977. Whereas Rule 10 as it read prior to August 6, 1977 permitted recovery of duty or charges short-levied or short-paid or erroneously refunded within three months of the date on which the duty or charges were paid or refunded, the substituted r, 10 extended that period to six months. On November 16, 1980 the substituted Rule 10 was removed from the Rules and Section 11(A) was introduced into the Act. It provided for the recovery of duty not levied or paid or short-levied or short-paid or erroneously refunded within six months from the relevant date. My attention was drawn by Mr. Merita to the judgment of a Division Bench of the Allahabad High Court in Ajanta Paper Products v. Collector of Central Excise, Kanpur (1982) E.L.T. 201 (Allahabad). The learned Judges noted that the amending Act which brought Section 11A on the statute book did not contain any provision to the effect that proceedings pending under Rule 10 on the date on which Section 11A came into effect would be treated as proceedings under that section. They, therefore, held that proceedings taken under Rule 10 could not be continued after Section 11A came into effect.

9. Mr. Deodhar, learned Counsel for the respondents, submitted and rightly, that the principles of the Allahabad High Court's decision would not apply to the instant case because the order on the show-cause notice dated July 27, 1977 under Rule 10 had been made on August 4, 1978 at which time Rule 10 was in effect. It could not, therefore, be contended that the proceedings initiated by the show-cause notice under Rule 10 on July 27, 1977 had lapsed.

10. At the time the show-cause notice dated July 27, 1977 under Rule 10 was issued Rule 10 in its original form was in effect. It prescribed, as aforesaid, the period of three months. The recovery from the petitioners under the show-cause notice must, accordingly, be restricted to refunds made within the period of three months before July 27, 1977.

11. With the clarification aforesaid, the petition is dismissed.

12. There shall be no order as to costs.

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