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Commissioner of Central Excise Vs. Shri Jagdamba Polymers Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-04-2004

Reported in : (2005)(98)ECC34

Judge : A Wadhwa, A T V.K.

Appellant : Commissioner of Central Excise

Respondent : Shri Jagdamba Polymers Ltd.

Judgement :

1. The issue involved in these two appeals filed by the Revenue is whether the refund of Central Excise Duty claimed by M/s. Shri Jagdamba Polyers Ltd. is hit by the time limit specified in Section 11B of the Central Excise Act.

2. Shri Hitesh Shah, ld. S.D.R., submitted that the respondents had filed refund claims on the ground that they had got manufactured HDPE woven sacks from M/s. Tirupati Packaging on job work basis; that the job worker had paid duty under protest on the goods manufactured by them; that after the matter was finally decided by the Tribunal, they had filed the refund claims. He further submitted that the claims are time barred as they have been filed beyond the period of six months specified in Section 11B of the Central Excise Act; that the customers cannot take the benefit of protest filed by the manufacturer as held by the Supreme Court in the case of C.C.E., Mumbai-II v. Allied Photographics India Ltd., 3. On the other hand, Shri Hardik Modh, ld. Advocate, submitted that it has been held by the Supreme Court in the case of National Winders v.C.C.C., [2003 (154) ELT 350

(SC] that if the duty has been paid under protest by the manufacturer, the benefit of the same will be available to the customers also and the time limit specified under Section 11B of the Act will not be applicable. He, therefore, submitted that the matter was referred to the Larger Bench of the Supreme Court in the case of M/s. Allied Photographics India Ltd. as the Supreme Court found inconsistencies between the two decisions in the case of Sinkhai Synthetics & Chemicals Pvt. Ltd. v. C.C.E. [2002 (143) ELT 17 (S.C.] and C.C.E., v. T.V.S. Suzuki Ltd. [2003 (156) ELT 161 (S.C.) on one hand and the decision of the Constitution Bench in the case of M/s.

Mafatlal Industries Ltd. v. Union of India [1997 (89) ELT 247 (S.C.] on the other. He, therefore, contended that this issue was not referred to the Larger Bench of the Tribunal on the question as to whether the benefit of protest filed by the manufacturer will be available to the customer of the excisable goods or not; that accordingly the decision of the Supreme Court in the case of M/s. Allied Photographics India Ltd. is not applicable to the facts of the present matters and as the duty was paid under protest by the manufacturer, the time limit specified in Section 11B for filing the refund claim is not invocable.

4. We have considered the submissions of both the sides. It has been provided in Section 11B of the Central Excise Act that any person claiming refund of any duty of excise has to make an application before the expiry of six months from the relevant date. Second proviso to Sub-section (1) of Section 11B provides that the limitation of six months was not apply where any duty has been paid under protest. It is the contention of the ld. Advocate for the respondents that the duty was paid under protest by the job worker, who had manufactured the goods in question and as such in view of the judgment of the Supreme Court in the case of M/s. National Winders, the time limit specified in Section 11B will not apply to the refund claims filed by them. We do not find any force in these submissions as the issue has been decided by the Supreme Court in the case of M/s. Allied Photographics India Ltd. supra. The Supreme Court has held as under: "The point which still remains to be decided is - whether the respondent herein was entitled to refund without complying with Section 11B of the Act on the ground that it had stepped into the shoes of NIL (manufacturer) which had paid the duty under protest......... Section

11B(2)(c) conferred a right on the buyer to claim refund in cases where he proved that he had not passed on the duty to any other person. The entire scheme of Section 11B showed the difference between the rights of a manufacturer to claim refund and the right of the buyer to claim refund as separate and distinct. Moreover, under Section 4 of the said Act, every payment by the manufacturer, whether under protest or under provisional assessment was on his own account. The accounts of the manufacturer are different from the accounts of a buyer (distributor).

Consequently, there is no merit in the argument advanced on behalf of the respondent that the distributor was entitled to claim refund "on account" payment made under protest by the manufacturer without complying with Section 11B of the Act. Mr. Ganesh, learned Senior Counsel appearing on behalf of the respondent vehemently urged that the issue arising in the present matter is squarely covered by the decision of Division Bench of this Court in the case of National Winder v.Commissioner of Central Excise, Allahabad [2003 (154) ELT 35] in which it has been held that if duty is paid by a manufacturer under protest then limitation of six months will not apply to a claim of refund by a purchaser. For the reasons given hereinabove, we hold that the said judgment is per incuriam".

5. Thus, following the judgment of the Apex Court, we held that the refund claims filed by the respondents are beyond the time limit specified in Section 11B of the Central Excise Duty. Accordingly, we allow both the appeals filed by the Revenue.

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