

The Collector of Central Excise Vs. Healer (India) Laboratories

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-13-1983

Reported in : (1983)LC1223DTri(Mum.)bai

Judge : H Chander, D T K.S.

Appellant : The Collector of Central Excise

Respondent : Healer (India) Laboratories

Judgement :

1. This is an appeal filed by the Collector of Central Excise Bombay-I against the order No. 983/BI-I 84/82 at. 5.7. 82 of the Collector of Central Excise (Appeals). M/s. Healer (India) Laboratories have also filed a cross objection against the same order, and hence both the appeal and the cross objection have been heard and considered together and a common order is being passed.

2. The departmental representative on behalf of the appellant, the Collector of Central Excise, Bombay has argued that the respondents' claim for-refund was time-barred and it has been correctly rejected by the Asstt. Collector of Central Excise. Dn. K. II under his order dt.

20.1.82., The Appellate Collector of Central Excise has wrongly held that the limitation runs for 6 months from 31.3.81 which was the last day for the financial year 1980-81 during which the clearances of excisable goods manufactured by the respondents exceeded the exemption limit under Notification No. 80/80 dt.

19.6.80. Since the respondents had filed a claim" on 30.6.81, and since the period of payment of duty covered by the claim was 1.4.80 to 4.9.80, the claim for refund was received by the Asstt. Collector beyond the time limit of 6 months prescribed by Sec-II B. It was therefore correctly rejected as time-barred under Section 11-B of the Central Excises & Salt Act, 1944.

It has also been argued on behalf of the appellant that Notfn. 80/80 dt. 19.6.80 was amplified by Notification No. 73/31 dt. 25.3.81 which was effective from that date and the interpretation of this amplification was wrong in the order dt. 5.7.82 of the Collector of Central Excise (Appeals). It has also been urged that the respondents had not filed any classification list claiming exemption from duty during the relevant period. For these reasons it has been prayed that the order of the Collector of Central Excise (Appeals) be set aside and the order dt. 20.1.82 of the Asstt. Collector of Central Excise, Dn. K. II be restored under which the respondents' claim for refund of excise duty amounting to Rs. 56,211.85/- was correctly rejected.

3. The learned Counsel on behalf of the respondent has pointed out an error in the prescribed proforma EA-3 under Rule 216 of the C.E. Rules in which the appeal is to be filed to this Tribunal. He has argued that against Sr. No. 1 of proforma, the name mentioned is of Collector of Central Excise, Bombay-I and not Appellate Collector of Central Excise, Bombay. If, therefore, there is some order which has not been disclosed to the respondent, September 1983 C.E. & Salt Act, 1944 : Sees. 11-B & 35B(2) Rule 8 1225D the respondents would not have the opportunity of adequate defence. The learned representative of the respondent, however stated that on the basis of the Copy of the order enclosed, he would proceed to argue the respondent's case. He stated that the facts of the case were not disputed. The main question was interpretation of Notification No. 80/80 dt. 19.6.80. Proviso 3 of this Notification applies to the present appeal. The learned Counsel for the respondent briefly described the provisions of this Notification. He argued that only at the end of the financial year a manufacturer would come to know whether his clearances are exempt fully, or partially or liable to duty at the full rate. In this view the relevant date for claiming the refund would start only from the end of the financial year. The appellants had not cleared any goods before

1.8.80. The respondent could file the refund application only after the close of the financial year for determining whether he was liable to pay duty or not. The respondents had accordingly done so. The Collector (Appeals) had made a reference to para 5 of the Notification No. 80/80 dt. 19.6.80. For the sake of argument, even if it was conceded that this para came into effect from 25.3.81, it would not make the position any different as a manufacturer working under this Notification would know his liability only at the end of the financial year. Shri Srikantaiya referred to para 693 at page 691 of Central Excise Law Guide published by the Central Law Office, New Delhi-2. This paragraph is to the fact that the time limit for refund in case of exemption based on annual clearances in arrear will run from the close of the financial year. This paragraph is based on the various authorities cited at page 692. The learned Counsel also referred to the Government of India's decision reported in 1980 CENCUS 109D. In this decision, the Government of India have held that in an identical case of Notification No. 92/70, the time limit for refund would run from the end of the financial year. The learned Counsel then referred to Section 11-B, Sub-section (4) and read out the same. Accordingly, he pleaded that 6 months limit under Section 11-B was not applicable to the present case which was exception in terms of Section 11-B(4). He further fortified his argument by submitting that Notification No. 80/80 dt. 19.6.80 was issued under Rule 8 which was also statutory and it had to be read in the light of Section 11-B (4) of the Act. Upto Rs. 5,00,000/- the clearances were totally exempt and beyond this limit and upto the limit of Rs. 7.5 lakhs the clearances had the benefit of paying duty only at 75% of the rate applicable. The respondents have been given 'the benefit of reduced rate' and they had addressed the Superintendent and their RT-12 returns had been finalised accordingly. The learned Counsel therefore, argued that the assessments have to be treated as provisional upto the end of the year and requested that in view of these circumstances the order of the Collector of Central Excise (Appeals) was correct. He further pleaded that the department should be directed to pay the refund sanctioned under the order of the Collector of Central Excise (Appeals) within 3 months and prayed that the appeal filed by the Collector of Central Excise, Bombay-1 should be dismissed.

4. The learned departmental representative explained that there was a clerical mistake in the form of the appeal in proforma EA-3 and the clerical mistake had been rectified under letter No. V (V-Cell) IV/3 -453 /82/1194 dt. 5.5.83 of the Deputy Collector of Central Excise, Bombay. The learned departmental representative further submitted that Notification 80/80 was meant for small scale manufacturers. As soon as their clearances reached 80% of the exemption limit, they were required to approach the department to take out the licence and to maintain all the records as required by the Excise Law. In the present case, the respondents started paying duty from the very beginning and the reasons for doing so would be best known to themselves. They had filed the classification list showing the rate of duty and they had filed the RT-12 returns for which the department did not raise any objection. It was upto the respondents to have claimed exemption from the very beginning and not pay duty. Alternatively they could have paid the duty under protest or resorted to provisional assessment. Their refund claim was now time-barred under Section 11 -B. For this purpose the date of payment of duty was material and not the last date of the financial year. He, therefore prayed that the appeal should be allowed.

5. We have examined the submissions on both the sides. The main question for consideration is the interpretation of Section 11-B. It has been argued before us that in case of Notifications issued under Rule 8 accoiding partial or full exemptions to manufacturers, based on the value of annual clearances, the time limit for the purposes of Section 11-B should count from the last date of the financial year. In support of this argument, certain authorities have been quoted by the respondent. We find that this argument is mis-placed. Notification No.80/80 dt. 19,6.80 is issued in terms of Rule 8 which deals with the exemption from payment of duty. The notification issued under this rule cannot therefore say what the date for claiming the refund should be.

If that point were to be conceded there would be different dates for computing the time limit under Section 11-B for different manufacturers. Such a situation will be absolutely untenable. On the other hand, it is seen that the time limit for the purpose of claiming refund is prescribed by the Act itself, normally Section 11~B. The Act has a precedence over the rules, and therefore, Section 11-B would

override any provisions of the Central Exxise Rules. The relevant date has also been described in Section 11-B for the purpose of counting the time limit thereunder. there is, therefore, no substance in the respondents' argument that the time limit in their case should count from the last date of the financial year. There is no dispute that the duty in question was not paid under protest or that ;t was paid lender provisional assessment. Therefore, for the purpose of counting the l ime limit in the present appeal, the same will run from the date of the payment of duty. The cases considered by the Hon. High Court's Judgment relied on by the respondent are distinguishable from the present case under appeal. Thereforethe ratios of these decisions are not applicable to the jpresent case. The respondents claim was received by the Asstt.

Collector on 30.6.81, and it was for the period 1.4,80 to 4.9.80 during which the duty l was paid. The claim is therefore, clearly time-barred under Section 11-B, Accordingly, we find that the order of the Collector of Central Excise (Appeals) is not correct. We set aside the same and hold that the respondent's claim for refund is time-barred and no refund is due to them. Accordingly, we allow the appeal of the Collector of Central Excise, Bombay and dismiss the cross-objection filed by M/s. Healer (India) Laboratories Pvt. Ltd.

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