

Collector of Central Excise Vs. Balarampur Chini Mills

Collector of Central Excise Vs. Balarampur Chini Mills

SooperKanoon Citation : sooperkanoon.com/4027

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-18-1987

Reported in : (1989)(20)ECC79

Appellant : Collector of Central Excise

Respondent : Balarampur Chini Mills

Judgement :

1. On claim preferred by the respondents M/s. Balarampur Chini Mills Limited under Notification No. 108/78-C.E., dated 20.4.1978, orders were passed on 7.10.1978 under which they took credit (of the amount granted) on 8.10.1978. Subsequently, notice dated 5.9.1979 was issued to them pointing out that in respect of the free sale sugar subsequently cleared by them (with reference to which also the claim had been earlier preferred and allowed) the duty paid by them at the time of clearance was less than the amount for which rebate had been allowed earlier, and hence the differential amount was to be repaid by them. Subsequently, the said notice was cancelled by issue of a fresh notice dated 26.11.1979, the purport of this second notice also being to call upon them to show cause why the amount ought not to be recovered from them. On receipt of their reply and after adjudication, the Assistant Collector passed an order confirming the demand. On their appeal the said order was set aside by the Collector (Appeals) under his Order dated nil. This appeal is by the Collector of Central Excise, Allahabad against the said order.

2. We have heard Shri K. C. Sachar, JDR, for the Department and Shri D.N. Kohli, Consultant, for the respondents.
3. Though on the earlier hearing objection had been taken that no due authorisation had been issued by the Collector as could have entitled the Assistant Collector to file the appeal, the said objection was subsequently withdrawn by Shri Kohli after inspection of the records of the Collector.
4. The Collector (Appeals) had set aside the order of the Assistant Collector on the finding that the demand for recovery was barred by time. He held that there was nothing in the order dated 7.10.1978 to indicate that the rebate had been allowed provisionally. He further held that since credit had been taken on 8.10.1978 but the notice for recovery of part thereof was issued on 5.9.1979, the said demand was barred by time. It is this finding that is questioned in the present appeal.
5. In the Grounds of Appeal, it is mentioned that though credit had been taken in PLA on 8.10.1978, the fact that actual duty paid at the time of subsequent clearance was less than the credit already given, could have become known only at the time of clearances during the period May 1978 to March 1979 and therefore since the last clearances were made in March 1979, the demand issued on 5.9.1979 was not barred by time. It is further contended in the grounds of appeal that without prejudice to the above said contention it would only be the period of limitation prescribed under the general law (evidently the Limitation Act) that should be held to govern the present claim, and if so, period of six months prescribed under the Central Excises and Salt Act was not relevant.
6. In his submission before us Shri Sachar did not advance any argument regarding the alternative ground. His submissions were only with reference to period of limitation mentioned in Section 11-A of the Central Excises & Salt Act and to contend that with reference to the said provision itself, the demand was within time. We also note that in the case of Miles India Ltd. [1985 ECR 289 S.C. =1987 (30) ELT 641 (S.C.)], the Supreme Court had upheld the finding of this Tribunal that in any claim for refund made before the authorities functioning under the Customs Act, the claim would be governed by the provisions regarding limitation prescribed in the Customs Act. It is evidently for this reason that Shri

Sachar did not advance any arguments on the alternative plea of the applicability of the period of limitation in the general law.

7. The dates are not in dispute. The credit was ordered on 7.10.1978 and credit was taken on 8.10.1978. The show cause notice for recovery of part thereof was issued on 5.9.1979, the said notice being subsequently cancelled by issue of a fresh notice dated 26.11.1979.

This second notice specifically mentioned that the earlier notice stood cancelled by the issue of this fresh notice. The Collector (Appeals) held that since the case of the department was that the refund had been erroneously granted the demand for recovery thereof should have been issued within six months from the date of grant of refund (in the absence of any plea that the larger period of limitation was available) and that since the notice was issued more than six months after credit was taken in the PLA, the demand was barred by time. It was pointed out to Shri Sachar that in doing so, the Collector (Appeals) was merely acting in consonance with several decisions of this Tribunal to the same effect. This Tribunal had held to the above effect in the cases of Jagatjit Sugar Mills Company Limited, 1985 (21) ELT 289] and Malwa Sugar Mills Company Limited [1986 (23) ELT 144], the ratio of the said decisions being followed in a number of later decisions also such as Triveni Engineering Works Limited [1986 (26) ELT 583] and Order No.808/87 dated 9.10.1987 in the case of Doaba Sugar Mills. It had been pointed in the said decisions that the so called rebate granted under notifications such as Notification No. 108/78 were really in the nature of refunds only and there was nothing like provisional refund. It was also pointed out that there is no provision for any advance deposit or credit in terms of the notification. It was therefore further held that if the Department was of the view that it was not refund but only advance credit the result would be that provisions of Section 11-A would not be attracted for recovery of the said amount and the Department will have to seek recourse to the proceedings in Civil Court for recovery of these amounts in which event they may be entitled to invoke the provisions of the Limitation Act.

8. Shri Sachar submitted that the said decisions were not correct and he would, therefore, be making submissions to support the grounds put forward in their

appeal. His submission was that at the time of the grant under order dated 7.10.1978, the refund was not erroneous, but that it became erroneous only when subsequently, at the time of actual clearances, the duty payable was less than the rate at which the rebate had been granted and, therefore, it was that date, when duty was paid at the lesser rate, that would be the relevant date in terms of Section 11-A. We are unable to accept Shri Sachar's submission. Section 11-A provides that when any duty of excise had been erroneously refunded, the Central Excise Officer may within six months from the relevant date serve notice for recovery thereof. The relevant date had been defined in Section 11-A(3)(ii)(c). The same reads that the relevant date in the case of excisable goods on which duty of excise has been erroneously refunded would be the date of such refund. The date of refund, if the rebate is to be, as it must be, held to be a refund, would, in the present case, be 8.10.1978 when the credit was taken in the PLA. We cannot read into this definition an extended meaning that though refund had been granted on a particular date it would be deemed to be erroneously refunded on a subsequent date, the said date being the date of actual clearance. The Department need not have granted the rebate or refund before the actual clearances. If the Department, for whatever reasons, chose to grant the amount without waiting for the actual clearances, that would not postpone the date of refund to the date of the actual clearance. Credit having been taken on 8.10.1978, that would be the relevant date under Section 11-A. Since, admittedly, demand was issued more than six months after the said relevant date, the Collector (Appeals) was correct in holding that the demand was barred by time.

9. Shri Kohli further pointed out that in any event the effective notice for recovery would have to be held to be that issued on 26.11.1979 since admittedly under that notice the earlier notice had been specifically mentioned to stand cancelled. As earlier noted, the grounds of appeal read that the clearances were completed by March 1979, in which event even accepting the submission of Shri Sachar to be correct, the demand would still be barred by time since the effective notice was issued more than six months after March 1979. We, therefore, hold that even on that ground the order of the Collector (Appeals) has to be, in any event, upheld.10. For the above reasons, we hold that the order of the Collector (Appeals) was correct and hence we dismiss the appeal.

