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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-15-2005

Judge : M T K.C.

Appellant : Garments Craft

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants were manufacturing processed man-made and cotton fabrics with the aid of power and steam. On 2-1-91, central excise officers visited their premises and found that they had neither taken licence nor were paying central excise duty on clearances of the said goods. Therefore, certain quantities of fabrics were seized and total duty liability of Rs. 7,40,833.07 was assessed by the Central excise officers. The appellants thereafter deposited the said amount in the State Bank of Bikaner and Jaipur on 21-1-91 vide TR-6 Challan. A show cause notice was issued to the appellants proposing to confiscate the seized fabrics, appropriating the amount of Rs. 7,40,833.07 voluntarily deposited by them towards duty liability and for imposition of penalty.

The case was adjudicated confiscating the seized goods but allowing to be redeemed on payment of a fine of Rs. 50,000/-, imposing a penalty of Rs. 25,000/- and appropriating the amount of Rs. 7,40,833.07, which was voluntarily deposited by the appellants. Against the adjudication order of the Collector, the appellants filed appeal before the Tribunal and the Tribunal under its Order No. 748/98-D, dated 22-9-2000 set aside the penalty and redemption fine. It was pleaded before the Tribunal that they are entitled to refund of duty of Rs. 1,69,914.57 on the fabrics, which were not manufactured but were purchased from the market. The Tribunal came to the conclusion that no refund of duty can be ordered in these proceedings. The duty voluntarily paid by the appellants even before the issue of show cause notice has to be claimed by the appellants in terms of provisions of Section 11B as held by the apex Court in case of Mafatlal Industries Ltd. v. Union of India . Consequently, they set aside the impugned order so far as demand of duty of Rs. 1,69,914.57 was concerned for re-examining the plea of the appellants and deciding it de novo in accordance with the principles of natural justice. This issue which was remanded back was decided under Order-in-Original No.115/2000, dated 9-10-2000 by the Joint Commissioner and he came to the conclusion that no details has been furnished by the assessee that the concerned goods were got fabricated and there is a difference in the duty quantum. As there is a difference in the duty quantified by the CEGAT's order and that claimed by the assessee in their reply dated 20-9-91 to the show cause notice, it is necessary that the assessee should file refund claim with proper officer, who will decide the issue as per provisions of Section 11B of the Central Excise Act. The appellants accordingly filed refund claim of Rs. 1,69,914.57 on 8-12-2000. This refund claim was examined by the Asstt. Commissioner and a show cause notice dated 11-12-2001 was issued to the appellants that on scrutiny of refund claim, it is observed that they had quantified the refund amount on the basis of CEGAT's Final Order but have not submitted any separate quantification chart showing quantity, value, rate of fabrics, as to how the quantum of refund amount claimed by them. The refund application in prescribed proforma has been filed by the assessee on 18-12-2001 whereas the duty was paid on 21-1-91, which has not been paid under protest nor the assessee followed any procedure as required under Rule 233B of the Central Excise Rules. It was, therefore, proposed to reject their claim on the ground of time limitation. After considering the reply to the show cause notice, the Asstt. Commissioner found that the refund claim is time-barred. The appeal filed by the appellants against this order was also dismissed by the Commissioner (Appeals).

2. It is pleaded that the appellants had paid the duty of Rs. 7,40,883.07 under protest and since they were pursuing adjudication and appellate remedies on this

account, therefore, requirement of Rule 233B of the Central Excise Rules, 1944 have been fulfilled and the refund is a consequential refund due to the order of Tribunal. Therefore, the time limit of six months is not applicable. Ld. Advocate relied on the following decisions:Airtight Electronics Pvt. Ltd. v. CCE, Faridabad 2004 (177) E.L.T. 971 (Tribunal-Delhi) Where it was held that refund claim filed in consequence of a favourable order of Tribunal not hit by limitation if part of the amount claimed as refund deposited during pendency of adjudication proceedings and a part deposited in pursuance of stay order of Tribunal.

Where it was held that duty deposited by party while pursuing appellate remedy to be considered as duty paid under protest.

3. It was pleaded on behalf of the Revenue that under Order No.748/98-D, dated 22-9-98 1998 (29) RLT 259, the Tribunal in Para 4.1 of the order has made it clear that, "we agree with the ld. JDR that no refund of duty can be ordered against these proceedings. The refund of duty voluntarily paid by the appellants before issue of show cause notice has to be claimed by the appellants in terms of provisions of Section 11B as held by the Apex Court in the case of Mafatlal Industries Ltd. ." It was pleaded that from this decision, it is very clear that the refund is not a consequential refund. It was also pleaded that in view of decision of Mafatlal Industries Ltd. (supra), the time limit of six months from the relevant date has to be considered for refund claim being in time.

Therefore, the lower authorities have correctly denied the refund on the ground of time bar.

4. I have considered the submissions. I find that from the Order No.748/98-D dated 22-9-98, it is very clear that the Tribunal has not accepted the request of refund of duty of Rs. 1,69,914.57 as part of the proceedings before the Tribunal. Therefore, the pleading of the "Revenue is correct that this is not a consequential refund. The Tribunal in the above said order the order so far the demand of Rs. 1,69,914.57 was concerned. It was directed to re examine the plea of appellant and decide it de novo. The issue was decided de novo under the Order-in-Original No. 115/2000, dated 9-10-2000, where it was held that "No details have been furnished by the assessee that the seized goods were cotton fabrics and why

there is a difference in the duty quantum. CEGAT in Para 4.1 of their order dated 22-9-98 has also agreed with the JDR that no refund of duty can be ordered against these proceedings. In view of the CEGAT's order, no refund can be raised in these proceedings. However, the assessee is at liberty to file refund claim with documentary evidence that they have paid excise duty with respect to the seized fabrics. As there is difference in the duty quantified in CEGAT's order and that claimed by the assessee in their reply dated 20-9-91 to the show cause notice it is necessary that the assessee should file refund claim with the proper officer, who will decide the issue as per provisions of Section 11B of the Central Excise Act, 1944".

5. The refund claim was rejected by the original authority on the ground of time bar as the amount has not been paid under protest. He also referred to the decision of Mafatlal Industries Ltd. v. U.O.I.(supra), where it was held that "as regards time limit the second proviso to Section 11B expressly provides that limitation of six months shall not apply where any duty has been paid under protest". Thus, the refund was held to be clearly time/barred. The Commissioner of Central Excise (Appeals) has also observed that since the appellants had deposited the duty voluntarily before an appealable order issued, therefore, the duty deposited by the appellants cannot be said that they had deposited the duty pending decree or order. The duty deposited by the appellants on 21-1-91 even before the issue of show cause notice, cannot be said to be deposited under protest. Since the appellants had not filed the refund claim within six months as prescribed under Section 11B(2), the adjudicating authority has rightly rejected the claim being beyond the stipulated period provided under Section 11B. I find that when the Tribunal in its Order No. 748/98-D, dated 22-9-98 had made it clear that the refund amount is not as a consequence of those proceedings before the Tribunal The authorities have only to examine whether the refund claim is correct and has been filed within time or not. I find that the lower authorities have correctly applied the period of six months for determining time of the limitation from date of payment of duty. I, therefore, find no merit in the appeal. The appeal is rejected.