Collector of Central Excise Vs. Ghosi Sahkari Kray-vikray

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-15-1988

Reported in : (1988)(18)LC157Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Ghosi Sahkari Kray-vikray

Judgement :

1. This is an appeal filed by the department against the order of Collector of Central Excise (Appeals), Allahabad. The facts are that the respondent deposited Rs. 6,893.00 as initial advance under AR-8 for payment of duty on the Khandsari Sugar produced by them. The amount was un-utilised and the party filed claim for refund of the amount on 15-3-1981. This claim was received in the office of the Assistant Collector on 30-7-1981. The Assistant Collector held that as per Section 11B a refund claim was to be filed before the Assistant Collector within a period of 6 months and that since in this case, the claim was received in the office of the Asstt. Collector after the 6-month period, it was barred by limitation. When the resppndent went in appeal before the Collector (Appeals), the appeal was allowed on the grounds that the claim was duly received in the Range Office within the prescribed period and that delay in receipt in the office of the Asstt.

Collector was due to the Inspector in the Range Office and not due to any fault on the part of Appellant. It is against this order that the department has come in appeal before this Bench.

2. Heard Smt. Nisha Chaturvedi, SDR for the department and Shri Laksh Ram Singh on behalf of the respondent.

3. The learned SDR is emphasising the strict requirement of the rule that the appeal should have been received by Asstt. Collector within a period of six months. Shri Singh on the other hand emphasises that the refund claim was duly filed with the department in the Range office ' well within the period of six months. It is submitted that the Inspector in the Range office did not object to the filing of the claim in the Range office. Nor did he afford any guidance to the assessee as regards where the claim should be filed.

4. I have carefully considered the facts of the case and the submissions made by both sides. It is not denied that the refund claim is required to be filed in the office of the Asstt. Collector within a period of six months. At the same time it is seen that the Range office, which is a part of the formation called the Division, headed by the Asstt. Collector, accepted the refund claim which was received in the Range office within time. If it did not have jurisdiction, the Range office should have returned the refund claim to the assessee affording him necessary guidance in the matter as to where the claim should be filed. The fact that the Range office accepted the refund claim and thereafter took it upon itself to forward it to the Asstt.

Collector would show that the Range office considered itself competent to receive the refund claim and to forward it to the Asstt, Collector.

In the process of forwarding the refund claim, the Inspector was responsible for delaying it for more than four months. The Collector has rightly observed that for this delay, after the department had accepted the refund claim in the Range office, the fault cannot be of the respondent.

5. There are various decisions of this Tribunal in which it has been held that if it has been the practice in the concerned Collectorate to allow assessees to file the refund claims in the Range offices to be forwarded to the concerned Asstt. Collectors, and in any such case, there is delay in forwarding the refund claim from a Range office to the office of the Assistant Collector, then for this delay, such

claim should not be held as barred by limitation. The department has not pleaded before this Bench that the filing of the refund claim in Range office was contrary to the practice and orders prevalent in the Collectorate.

6. Considering all the above facts and circumstances, 1 uphold the orders of the Collector (Appeals).