

Collector of Central Excise. Vs. Modi Arc Electrodes Co.

Collector of Central Excise. Vs. Modi Arc Electrodes Co.

SooperKanoon Citation : sooperkanoon.com/4299

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-11-1988

Reported in : (1988)(17)ECC147

Appellant : Collector of Central Excise.

Respondent : Modi Arc Electrodes Co.

Judgement :

1. This is a case where respondents have availed production incentive under Notification No. 198/76, dated 16-6-1976. Their base clearances were fixed by the Department on 22-12-1976 and on this basis, the respondents availed of duty concession, in excess of base clearances during the financial year 1978-79 (i.e. upto 31-3-1979). On 26-9-1980, a show cause notice was issued to the respondents demanding duty of the order of Rs. 1.85,289.34 alleging that the base clearances had wrongly been worked out at a lower level and the respondents availed of higher concession. This demand of duty was confirmed by the Assistant Collector, but set aside by the Collector (Appeals) on the ground that it is barred by limitation. It is against this order of the Collector (Appeals) that the department is now before us.

2. In the order passed by the Collector of Central Excise, Meerut, authorising the filing of this appeal, it is submitted that the Collector (Appeals) had erred in allowing the appeal on the question of limitation under Rule 10. Relying on the decision of the Gujarat High Court in the case of Indequip Chemical Dyes Ltd.. it is submitted that Rule 10 applies to a case when the duties or charges were short

levied through mis-statement as to the quantity, description or the valuation of the goods on the part of the owner. In the present case, it is stated that there Was no such mis-statement, but only wrong fixing of base clearances. The Collector also referred to the decision of the Delhi High Court in Civil Writ Petition No. 661 of 1969 in the case of Gopal Paper Board Mills, Ghaziabad v. Union of India, in which it was held that Rule 10 would not apply where there was no mis-statment. It was held that where the goods have been cleared without the petitioners having issued a gate-pass, it would mean that the petitioner has not made any statement and, there fore, in such a case, Rule 10 would not be applicable.

3. However, Smt. Dolly Saxena, SDR, who appears for the department, changes the grounds of appeal and submits that the department relies on Rule 10. She refers to Rule 173F of Central Excise Rules and states that it was the duty of the assessee to point out the mistake in working out the base clearances. It is further urged that there may be mis-statement, but there is suppression of fact, as party was no doubt aware of the mistake in the calculation of base clearances.

4. Responding, Shri R.K. Verma, Consultant submits that the respondent's case was always that the base clearances had been correctly determined. There was, therefore, no suppression of fact by the respondents. The so called mistake was pointed out by the department after 4. years, invoking the extended period under the law, which is wholly unauthorised in view of the facts of the case.5. We have carefully considered the submissions made. Smt. Dolly Saxena has, submitted that the assessee was aware of the mistake and that, therefore, on account of failure to bring the mistake to the notice of the department, was guilty of suppression of fact. We do not find that it has at all been the case of the department that there was any deliberate suppression of fact on the part of the respondents. Nor is there any substantiation of the allegation that the respondent was aware of the mistake. Whether it was a mistake or not, is an aspect which we do not consider it necessary to go into, since the appeal has been allowed only on limitation. If the department fails to raise demand of duty within the normal period provided under the law, it cannot invoke the extended period by having recourse to unsubstantiated allegation of awareness of mistake by the assessee and, therefore, suppression of fact.

6. In the circumstances of the case, there is no reason to interfere with the order of the Collector (Appeals).

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com