

Collector of Central Excise Vs. Cawnpore Sugar Works Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-13-1988

Reported in : (1989)(23)LC225Tri(Delhi)

Judge : V Raghavachari, P A K.

Appellant : Collector of Central Excise

Respondent : Cawnpore Sugar Works Limited

Judgement :

1. In this case the facts are that as per show cause notice issued to the appellants on 1.6.1979, the respondents were provisionally allowed a credit of duty Rs. 2,71,028.16 on 5019.04 qtls. of free sale sugar, calculated to be excess production under Notification No. 108/78-CE dated 28.4.1978. The department, however, found on examination of the factory records that the respondents had cleared the said free sale sugar on payment of duty of Rs. 1,24,095.76 only. It thus appeared that the respondents had taken a credit of Rs. 1,46,932.40 in excess of the amount actually paid by them and they were therefore required to show cause why this amount should not be debited to their Personal Ledger Account.

2. Reply to this show cause notice was sent by the respondent on 23 July, 1979. On consideration of this reply a further notice dated 22.1.1980 was issued to the respondents that the differential amount recoverable from them appeared to be Rs. 1,48,744.34 instead of Rs. 1,46,932 40 as intimated in the show cause notice dated 1.6.1979. It was noted in this communication that the amount was exclusive

of duty amounting to Rs 4,691,22 on reprocessing loss of 186.61 quantals of sugar out of the rebated sugar which was also refundable.

3. In the order-in-original, the Assistant Collector directed that recovery be made of Rs. 1,48,744.34 from the respondents. However when the matter went up in appeal, the Appellate Collector ordered that in this matter refund order granting the respondent credit of Rs. 3,60,510.62 was made on 24.11.1978. while the notice to show cause why an amount of Rs. 1,46,932.40 should not be debited in the Personal Ledger Account of the respondents was issued only on 1.6.1979 i.e. much beyond the normal period of six months. The Appellate Collector held that the grant of excess refund, if any, was not caused by the appellants by collusion or wilful mis-statement or suppression of facts. The demand of duty therefore was set aside as time barred, and the order of the Assistant Collector confirming the demand was quashed.

4. We have heard Shri K.C. Sachar, JDR for the department and Shri B.B. Gujral, Advocate for the respondent.

5. The learned JDR has made essentially two points. Firstly, he says that the Appellate Collector, on the issue of time bar, has wrongly gone by the date of the order sanctioning the refund i.e. on 24.11.1978. He submitted that the amount can be considered to be refunded only when it was actually credited i.e. on 9.1.1979. It is urged that although the date of the sanction of the rebate was 24.11.1978, the actual date of availment of the rebate was 9.1.1979, and this would be the relevant date for determining an issue relating to time bar.

6. The learned JDR has also urged that the grant of rebate of duty is always provisional and subject to realisation, adjustment, at the time of clearance and assessment of the sugar, and therefore the date of advance credit, as such, should not be considered as the final date of refund.

7. Responding Shri B.B. Gujral, Advocate, submits that the date of sanction of refund i.e. 24.11.1978 should rightly be considered as the date of refund. In this connection he relies on the decision of the *Vidarbha Mills Barar Limited v. Collector of Central Excise, Nagpur* and Ors. 1979 E.L.T. (J 535).

8. The learned Advocate's alternative plea is that the date of the second show cause notice issued by the department on 22.1.1980 is to be considered as the actual date of show cause notice, to determine whether the duty has been demanded within 6 months-period, and, if this argument is acceptable, the demand of duty is hopelessly time barred.

Shri Gujral in this connection relies on this Tribunal decision in the case of Bramec Shri (P) Ltd. Delhi v. Collector of Central Excise, Kanpur 9. We have carefully considered the facts of the case and submissions made before us. The first issue for our decision is as to which date should be considered as the date of "making the refund". The respondents have in this connection cited the Bombay High Court decision in the case of Vidarbha Mills Barar Limited v. Collector of Central Excise, Nagpur and Ors. (supra). The provision governing the demands in such instances would be Rule 10 of the Central Excise Rules as it then stood. The relevant date has been defined in Rule 10(3)(ii)(c). It reads that in the case of excisable goods on which duty has been erroneously refunded the relevant date for the purposes of that Rule was the date of such refund. The contention for the Department is that the date of refund would not be that on which the sanction order was passed (24.11.1978), but it would be the date on which credit was actually taken in the PLA register. Rule 10 as it stood during the period covered by the Bombay High Court decision (supra) required that a written demand by the proper Officer should be made within 3 months from "the date of making the refund". In that case the refund had been made by issue of refund vouchers which were encashed after 24.10 1976 that being the date on which the refund vouchers were sent to the assessee, under a covering letter. The High Court observed that the encashment of the refund vouchers was not from the Department itself but by presentation to the concerned Treasury.

The High Court held that in such circumstances the refund is complete by the issue of refund vouchers and it is from that date that limitation should be computed. The argument for the Department in the present matter is that the said decision would not apply to this case since the refund was ordered here not by issue of refund vouchers but by issue of an order acting under which the assessee was to make the necessary credit entry in the PLA register so that as and from

that date of making that entry the amount would be available to the assessee for being operated upon for payment of duty. It is contended that in such circumstances the date of refund would be the date when the credit was taken and not the date when the order was passed.

10. We are convinced that this submission for the Department is correct and has to be accepted. Whenever a refund is made by issue of a refund voucher the amount is debited in the accounts of the Department on the date of issue of the voucher and thus the refund, so far as the Department is concerned, could be said to have been made on that day, irrespective of when exactly the refund voucher is later encashed by the assessee. But so far as situations as in the present case, where refund order is passed but no cash refund is made, refund being ordered by way of credit in the PLA, the amount would stand to the credit of the Government until an entry is actually made in the PLA by the assessee taking credit of the amount of refund ordered. Therefore, so far as the Department is concerned the refund would have been made only on the date credit is taken and simultaneously the refund would have been obtained by the assessee also on that day.

11. In this connection we may refer to a decision of the Supreme Court where also this question (as to when a refund can be said to have been made) was considered, though not with reference to Rule 10 of the Central Excise Rules This was in the case of Geep Flash Light Industries Ltd. (1983 ELT 1596 SO : 1986 (6) ECR 430 SC. The question to be considered therein was with reference to the provisions of Section 131(5) of the Customs Act, as it then stood, read with Section 28 of the Customs Act Section 28(3)(c) reads that for the purpose of Sub-section (1) the relevant date means, in the case where duty has been erroneously refunded, the date of refund. As earlier seen Rule 10 of the Central Excise Rules during the period relevant to this case spoke of "the date of refund". Paragraph 18 of the judgment of the Supreme Court reads as follows: Counsel for the appellant contended that even if refund has not been made, the date of refund will be the relevant date and six months would be calculated from 20 April, 1972 when refund was ordered and, therefore, the notice dated 10 February, 1973 will be hit by the provisions of limitation of six months from the relevant date. The contention of the appellant is wrong. It is only where refund has in fact been made and money has

been paid, the relevant date will be six months from the date of actual payment for (SIC) refund.

It is thus seen that the Supreme Court, construing the words "the date of refund" held that the date would be the date when the refund was actually taken and not the date when the order for refund was passed.

12. In cases of refund by issue of vouchers there may be two or three dates for consideration : (iii) the date when refund was actually obtained by encashment of the voucher.

In cases where refund is to be taken by taking credit in the PLA there would be only two dates.

For reasons mentioned earlier while it will be proper to hold, in cases where refund is given by issue of refund vouchers, that the date of refund would be the date when the refund voucher was prepared and issued, the date of refund in cases where refund is by ordering credit to be taken in the PLA would be the date when credit is actually taken in the PLA.¹³ The contention for the Department in the present instance is that the date when credit was actually taken was 9.1.1979 and if limitation is computed from that date the notice dated 1.6.1979 was within time, the subsequent notice merely altering the amount demanded. We find that no evidence is available to us at present as to the date when credit was actually taken. This matter had not been raised in this form before the lower authorities. That is why they did not go into this particular date. The order of the Collector (Appeals) will therefore have to be set aside and the matter will have to be remitted to him in order to go into this question of limitation in the light of the observations above and thereafter decide the issue appropriately.

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