C.C.E. Vs. K.V. Cables and Conductors

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-16-1988

Reported in : (1988)(19)LC401Tri(Delhi)

Judge : R T K.L., R T I.J., G Agarwal

Appellant : C.C.E.

Respondent : K.V. Cables and Conductors

Judgement :

1. The relevant facts of this appeal are that the respondents M/s. K.V.Cables & Conductors submitted a refund claim pertaining to Central Excise duty paid by them between the dates 1.7.1980 to 16.9.1980. This refund claim was received by the Assistant Collector on 15.6.1981. The ground for the refund application was that the total aggregate value of clearance by the factory during the financial year 1980-81 was less than 15 lakhs rupees, as a result of which the appellants (who cleared the goods on payment of duty) became eligible to concessional assessment under Notification No. 80/80-CE.2. The Assistant Collector rejected the refund claim on the ground that the refund application was received by him after the expiry of the period of limitation prescribed by Section 11B of the Central Excises and Salt Act.

3. The appellant then filed an appeal before the Collector of Central Excise (Appeals). The Collector held that the period of limitation in the cases where the exemption was based on the value of annual clearances was to be reckoned from

the case of the financial year and not from the date of payment of duty. In coming to the conclusion the Collector followed a Kerala High Court judgment 1978 E.L.T. J 705 and also an order passed by the Government of India and another by the Appellate Collector. The Revenue filed the present appeal against the Collector's order.

4. Shri J.N. Nigam, the Learned SDR submitted that the High Court judgment on which the Collector relied and the respondent now relies, was over-ruled by a Division Bench of the same High court and was reported in 1983 E.L.T. 2156 Kerala : 1983 ECR 633D (Cegat). He submitted that in another order the Tribunal considered a situation similar to the present one and held that limitation commences from the relevant date as defined in Section 11B. In this context the Learned SDR cited order No. 248/88-B1 dated 13.5.1988 in Appeal No C.C.E.Ahmedabad v. Indoprint Enterprises.

5. Shri Y.N. Chopra, the Learned Consultant for the respondent opposing the arguments submitted that where the concession is based on the value of annual clearance, it is not possible for the licensees to make refund application within the period of limitation reckoned from the date of payment. In any event, according to the Learned Consultant the eligibility to refund arises only after the end of the financial year.

6. We have considered the arguments of both sides The respondents relied, besides the Kerala High Court judgment on another judgement of Andhra High Court reported in 1980 E.L.T. 620 Auric Enginnering Pvt.

Ltd. v. Asstt. Collector of Central Excise and Ors. We note that the judgment was delivered by a single Judge whereas as submitted by the Learned SDR, the latest Kerala High Court judgment was delivered by a Division Bench. In that judgment the Kerala High Court held that in the respect of exemption based on the annual turn over, limitation for claim Refund should run from the date of clearance and not from the end of the assessment year. This places the patter beyond any further questions. Following the judgment of the Kerala High Court, we hold that in the present matter also the limitation commences from the date of payment of duty.

7. Accordingly, we set aside the impugned order and allow the appeal, restoring the Assistant Collector's order.