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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-08-1983

Reported in : (1983)(14)ELT2013TriDel

Appellant : Paros Electronics (P) Ltd.

Respondent : Collector of Customs

Judgement :

1. In this revision application, transferred to this Tribunal and heard by us as an appeal pursuant to Section 131B of the Customs Act, 1962, the only issue that arises is a question relating to the bar of limitation prescribed in Section 27-B of the Customs Act.

2. Admittedly, the duty on import was paid on 14-1-1976, without any protest whatsoever. A claim for refund under Section 27 of the Act was made to the Asst. Collector of Customs, Bombay on 10-9-1976, that is to say, beyond six months from the date of payment.

3. The Assistant Collector of Customs, as well as the Appellate Collector rejected the claim on the ground of bar of limitation in terms of Section 27-B of the Customs Act.

4. The only submission made by Shri Ganesan in this appeal before us is that, notwithstanding the various decisions of the Tribunal in-(Ruby Products, Bombay v. C.C., Bombay), he would still press his contention that the claim for refund was

not barred by limitation, particularly in view of the fact that it relates to countervailing duty which was not leviable at all and consequently, the three year period prescribed in terms of the Limitation Act would govern the claim for refund. He referred to Article 141 of the Constitution of India and relief upon the rulings in-(1) A.I.R. 1973 S.C. 1300 =1983 E.I.T. 1495(S.C.) [Patel India (P) Ltd. v. Union of India and Ors.].(Hindustan Sugar Mills v. State of Rajasthan and Ors.).(Hindustan Sugar Mills v. State of Rajasthan and Ors.).

(4) 1981 ELT 140 (Delhi) (Wazir Sultan Tobacco Co. Ltd. v. U.O.I. and Ors.).

5. It would be observed that the aforesaid cases relied upon relate, one and all, to either suits or writ petitions filed for recovery of duty illegally levied and collected and dehors the relevant statutory provisions enabling refund and providing limitation therefor. Such suits or writ petitions could be instituted on the grounds of absence ab-initio of jurisdiction or a quasi-judicial authority acting in excess of jurisdiction. We had occasion earlier to distinguish cases where the jurisdiction of the Civil Court has distinguished from quasi-judicial authorities under the statute is invoked in a suit or a writ petition when the limitation prescribed in the statute ceases to be applicable and the general law of limitation can be invoked.

Particular reference may be made in this context to our decisions reported in 1983 ELT 558 (Indian Cables Co. Ltd. v. C.C., Calcutta) and 1983 ELT 839 (Nanavati and Co. v. C.C., Bombay).

6. Even in the decision of the Delhi High Court relied upon by the Appellant in 1981 ELT 140, it had been conceded that the statutory authorities may not be able to entertain an application for refund in terms of the relevant statutory provisions. This, however, would not prevent the petitioner from approaching the Court for appropriate directions under Article 226 of the Constitution of India. A clear distinction has, therefore, been made between the invocation of the statutory relief granted subject to a rule of limitation and a suit or a writ petition filed in a court or law, dehors the statute.

7. We do not propose to repeat all the reasons set forth in the two aforesaid decisions. Suffice it to say that for the reasons recorded therein this appeal

deserves to be dismissed and is accordingly dismissed.

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