Collector of Central Excise Vs. Mahindra and Mahindra Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-19-1989

Reported in : (1990)(28)LC564Tri(Mum.)bai

Judge : J T R., P Desai

Appellant : Collector of Central Excise

Respondent : Mahindra and Mahindra Ltd.

Judgement :

1. This is an appeal filed by the collector of Central Excise, Bombay-II against the order of the Collector (Appeals) bearing No.SKM-994/89-Bombay-II dated 17.2.1988, wherein the Collector (Appeals) has allowed the appeal of the respondents and set aside the order of the Assistant Collector on the ground that the demand issued and confirmed covers beyond a period of six months as laid down under Section 11A of the Central Excises and Salt Act, 1944.

2. Shri S.P. Prabhu, the learned JDR, contended that the show cause notice is dated 2.6.1987 and the credit was taken on 13.7.1987 during the the material period there was no time limit prescribed under Rule 57(1) of the Rules. Under this rule, recoveries of irregularly availed MODVAT credit can be made without any time limit. This rule was amended only subsequently provided for the time limit as laid down under Section 11A. Hence he pleaded that the order of the Collector (Appeals) allowing the appeal of the respondents in setting aside the order of the Assistant Collector on the ground that the demand is barred by time is not correct.

3. Heard Shri J.N. Pikle, Sr. Manager (Excise) for the respondents. He stated that it is settled law that the only provision for demanding duty is Section 11A of Central Excises Act and if no notice is issued under Section 11A and if such notices are issued beyond the period prescribed, they are not enforceable. He also contended that even on merits, they have a case and they are eligible for MODVAT credit. He also cited the following decisions in their favour: 4. After hearing both sides, we find that in this case, the main question to be decided in this appeal is, when there was no time limit under Rule 57-I of the Central Excise Rules prescribed, whether the time limit prescribed in Section 11A of the Central Excises and Salt Act, 1944, would be applicable and notice is required to be issued within the time limit laid down under Section 11A of the Act. This very same question was considered in another appeal filed by the Department in appeal No. E/28/89-Bom. decided on 7.12.1989 vide order No. 1101/89 WRB dated 7.12.1989 in the case of Collector of Central Excise, Bombay-II v. Bharat Containers Pvt. Ltd. While rejecting the appeal of the department, this Bench observed as below: After hearing both sides, we find that the main question to be decided is whether in the absence of specific time limit prescribed under Rule 57(I), does Section 11A come into operation and whether the time limit prescribed under Section 11A could be attracted.

Non-declaration of an input could no doubt entitle the department to deny the credit in respect of that input. This is the view taken by the South Regional Bench cited by the learned SDR. All the same, the question still arises and was not the issue before that Bench as to whether the recovery of MODVAT is to be done within the time limit prescribed under Section 11A or independently under Rule 57(1) of the Central Excise Rules, 1944. Section 11A comes into play wherever there is a short levy, non-levy or erroneous refund. In this case, the MODVAT credit demanded by the assessee is in the nature of credit of the duty paid on inputs taken in the prescribed accounts, which can be utilised for payment of duty towards the final product.

When the credit has been taken wrongly or it is in excess of the eligibility, it is a case of erroneous credit, which can be recovered by a demand. Such a demand cannot go beyond the purview of the statutory provisions of Section 11A of the

Central Excises and Salt Act, 1944. Even if Rule 57(1) is sought to be invoked, it is to be read with the provisions of Section 11A, which is the statutory provision for recovery of any duty either short-levy or non-levy or duty taken erroneously as proforma or MODVAT credit. This is the view taken by the South Regional Bench with regard to the recovery of erroneous proforma MODVAT credit. Erroneous MODVAT credit, though could be demanded under Rule 57-I, is to be within the purview of the time limits laid down under Section 11A and cannot go beyond the time limit laid down therein. The impugned order of the Collector (Appeals) is therefore, correct in law.

5. Following the ratio of the aforesaid decision, which this Bench has already taken, we do not find any merit in the appeal filed by the Department and accordingly, we dismiss the same.