Collector of C. Ex. Vs. Agro Transformers Co. Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-08-1990

Reported in : (1992)LC511Tri(Mum.)bai

Appellant : Collector of C. Ex.

Respondent : Agro Transformers Co. Pvt. Ltd.

Judgement :
1. This is an appeal filed by the Department against the order of the Collector of Central Excise (Appeals) bearing No. SKM-988/89(B-I) (File No. V-2(85 CETA) 1032/88 to 1035/88) dated 11-5-1989.

2. Brief facts of the case as revealed by Shri K.M. Mondal, the learned SDR, can be stated as below: 3. The respondents were directed to reverse the MODVAT credit availed of by four show cause notices issued by the Supdt. under Rule 57(1) of the Rules. The particulars of the show cause notices are as below: Date of show Receipt of Period Date of filing cause notice show cause notice covered of RT-12 Returns He contended that in all these cases, show cause notices have been issued within six months from the date of filing of RT-12 Returns as laid down under Section 11A of the Central Excises and Salt Act, 1944, and pointed out to the provision of the relevant date mentioned under Section 11A of the Act and contended that whereunder the receipt of monthly return showing particulars of duty paid on excisable goods removed during the month to which the said return relates, is to be filed by a manufacturer or producer, the date of which such a return as was filed. In this case, the relevant date being the date of filing of RT-12

returns and the show cause notices have been issued within a period of six months from the relevant date as laid down under Section 11A of the Act, the demands are within time. The Collector (Appeals), without verifying the fact and without applying the provision of Section 11A has held that the show cause notices are barred by limitation under the provision of Section 11A. He, therefore, pleaded that since the Collector (Appeals) has erred on the factual position but merely accepted the contention of the respondents to the effect that show cause notices are issued after a lapse of eight months, the order of the Collector (Appeals) is incorrect and is therefore required to be set aside and the order of the Assistant Collector is to be restored.

4. Shri Shidhore, the learned consultant for the respondents, contended that in this case, the show cause notices have been issued only under the provisions of Rule 57 (I) of the Rules and Section 11A has not been invoked. Moreover, he contended that the relevant date is the date of taking of credit, which are different dates and not from the date of filing the RT-12 Returns and hence he pleaded that for the purpose of computing limitation laid down under Section 11A, the date of credit taken from the RG-23 is to be taken as relevant date. He also pleaded that it is in the nature of erroneous refund and hence the relevant date according to Section 11A is the date of such refund, which in this case is the date of taking the credit. In other words, he contended that the relevant date for the purpose of demand is the date of credit rather than the date of filing of RT- 12 Returns. He however conceded that even taking the date of credit in some cases, the demand is within the time limit of six months and he has no objection in remanding the case back to the Collector (Appeals) for considering the case on merits with regard to the demands which are within six months from the date of credit.

5. After hearing both sides, we find that the respondents do not dispute the facts narrated by the learned SDR. On the other hand, the learned consultant pleaded for taking the relevant date as the date of credit. Under the MODVAT scheme, after filing the application giving specified inputs as well as the final products, the manufacturers, based on this declaration, can start receiving inputs and take the credit of duty paid on those inputs as reflected in the relevant gate passes. It is not the case of the respondents that the department can look into the credit so taken

in the RG-23A on the date when these inputs are received and the credits are entered in RG-23A. The first opportunity for the department to look into the eligibility of the credit taken is only through the RT-12 Returns filed alongwith the RG-23A extracts. Moreover, Mr. Mondal argued that it is not a case of erroneous refund where the department sanction refund and issue a cheque. Here the credit is taken by the assessee. This is based on the procedures laid down under the Rules and wrong availment of credit only results in short payment of actual duty payable on the finished goods.

Even in this view of the matter, the relevant date should be only the date on which the short levy comes to the notice of the department through RT-12 Returns filed. We agree with the contention of the learned SDR, Shri K.M. Mondal, that in this case, the first opportunity provided to the department for noticing the short levy or irregular availment of credit is only through the RT-12 Returns. Accordingly, we hold that the relevant date even for the purpose of demanding irregular credit under Rule 57(I) is the date on which RT-12 Return is filed. The other argument advanced by the respondents is that the show cause notice is issued under Rule 57-I and not under Section 11A. This argument is only to be recorded for dismissal because the Tribunal has been consistently taking the view that any demand raised under Rule 57-I is within the parameters laid down under Section 11A of the Act.

Moreover, even the Collector (Appeals) has held that the demand is time barred under Section 11A. If the argument of the respondents is to be accepted, then the benefit of the order of the Collector (Appeals) is not available to them. We, therefore, allow the appeal of the department, set aside the order of the Collector (Appeals) but remand the case back to him for consideration of the respondents' appeal on merits.