

Collector of Central Excise Vs. V.S. Engineering

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-06-1990

Reported in : (1991)LC365Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : V.S. Engineering

Judgement :

1. This is an appeal directed against the order of the Collector (Appeals) bearing No. V-2(85 CETA) 2578/87-Bom-I, dated 22-2-1989 allowing the appeal of the respondents on the ground of time bar and setting aside the order of the Assistant Collector confirming the demand.

2. Shri K.M. Mondal, the learned SDR on behalf of the Department gave the following requisite facts for disposal of the appeal. In this case Modvat credit on certain inputs was allegedly taken irregularly in the month of September 1986 and RT-12 returns were filed alongwith the relevant extracts of RG 23A (Part II), from which the Supdt. came to know of the irregular payment of credit and made an endorsement on the RT-12 Return, pointing out the ineligibility and asking the respondents to pay the duty of Rs. 12,855.72. The assessment of RT-12 Returns and endorsement was made on 24-2-1987. It was also followed up by a show cause notice dated 2-4-1987 on the basis of which the demand was confirmed by the Assistant Collector. He contended that even taking the show cause notice date of 2-4-1987 the demand is within time because of the fact that even going by the time limit prescribed under Section 11A of the Central Excises and Salt Act, the

department's first opportunity for coming to know of the irregular avail-ment of credit arises only on filing the RT-12 Returns and then only excess credit resulting in short levy of actual duty paid on final products could be detected. Hence the date of filing of RT-12 return is the relevant date as per Section 11A of the Act and taking this as the relevant date, the demand covered by the show cause notice dated 2-4-1987 is within time. He, however, fairly conceded that he does not have the exact date of filing the RT-12 returns by the respondents. Hence he pleaded that the order of the Collector (Appeals) be set aside and the matter be remanded back to the Assistant Collector for ascertaining the correct date of filing the RT-12 return and to decide whether the show cause notice issued on 2-4-1987 is within a period of six months.

3. Shri M.H. Patil, the learned advocate for the respondents, however, contended that the department is not in a position to give the date of filing of the RT-12 returns and they are not in a position to say as to what date they have filed the RT-12 returns and hence no useful purpose would be served by remanding the case back to the Assistant Collector.

He also contended that the credit has been taken during the period prior to the amendment of Rule 57(I) of the Central Excise Rules, when no time limit was prescribed. All the same any demand which is required to be issued even under Rule 57(I) is to be within the statutory provision of Section 11A of the Central Excises and Salt Act. He contended that Section 11A of the Central Excises and Salt Act provides for recovery of the duty short paid, short levied etc. within a period of six months from the relevant date and the subsequent amendment to Rule 57(I) has made it clear that the relevant date for this purpose is only the date of credit and hence going by the date of taking the credit in the RG-23A (Part II) the show cause notice issued on 2-4-1987 is beyond a period of six months undoubtedly. He therefore sought for dismissal of the appeal filed by the department and confirm the order of the Collector (Appeals). He also contended that the demand is to be covered under Section 11A Sub-section 3(c) of the Act, since the credit is equivalent to refund, the relevant date should be the date, on which the duty credit was taken.

4. After hearing both sides, we observe that in this case, during the material period Rule 57(I) was not self-contained in providing the time limit for issue of demand. We have, following the earlier judicial pronouncements, held that in the absence of any prescribed time limit in the rules, the statutorily laid down time limit under Section 11A cannot be ignored. In that context, a rational and logical approach is called for to work the provision of Rule 57(I) within the statutory compass of Section 11A. Section 11A prescribes various relevant dates for different contingencies. In this case the credit of duty paid on inputs is taken by the assessee themselves on the basis of a declaration filed before the proper officer. The officer is not present at the time of taking the credit nor is he scrutinising the receipts of inputs and the entries of credit in the RG 23A (Part II) on various dates of receipts on daily basis. The first opportunity - the assessing officer gets is only through the RT-12 Returns, which are filed before him, when he can find out whether the credits have been taken rightly or wrongly. That, being the crucial date, which is also provided for in Section 11A by prescribing the date of filing of the RT-12 returns, we have preferred to adopt this as the relevant date in the absence of any specific provision in Rule 57(I) itself. It is entirely a different matter, when the rule has been amended and it has been made self-contained. We have also taken this view in our Order No. 1101/89, dated 7-12-1989 in the case of Collector of Central Excise, Bombay II v. Bharat Containers Pvt. Ltd. and we have no reasons to disagree with our earlier findings and take a different view at this stage. We also do not agree with the learned advocate that MODVAT credit is to be equated with refund and accordingly the relevant date is to be adopted, mainly because of the fact that under Rule 11B, refund has been specifically defined as those including rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods, which are exported out of India. This definition does not seek to include either MODVAT credit or profor-ma credit. Moreover, refund is granted to the manufacturer who has paid the duty. Here MODVAT credit is given to the recipient of the inputs and not the manufacturer of the inputs. The difference between MODVAT credit and refund can be further listed and the list can be longer. We, therefore, do not agree with the contention raised by the learned advocate that it is a case of refund and accordingly relevant date should be viewed.

5. In the circumstances, we agree with Shri K.M. Mondal, the learned SDR that the case calls for remand back to the Assistant Collector for determining the actual date of receipt of the RT-12 Return and accordingly decide whether the show cause notice dated 2-4-1987 is within the time limit of six months or otherwise.

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