Collector of Central Excise and Vs. Tubular Packaging Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-14-1990

Reported in : (1991)(33)LC617Tri(Mum.)bai

Judge : J T R., P Desai

Appellant : Collector of Central Excise and

Respondent : Tubular Packaging Pvt. Ltd.

Judgement :

1. This is an appeal filed by the Collector of Central Excise & Customs, Vadodara against the Order-in-Appeal bearing No. GSM-468/89BD dated 28.2.1989 by the Collector (Appeals) Bombay, allowing the appeal of the respondents with regard to their refund claim in respect of duty paid on paper tubes and cones during the period from 26.7.1986 to 21.1.1987.

2. They have filed the refund claim on 5.2.1987 based on the Board's Tariff Advice contained in the Telex holding that these products are not chargeable to duty. The Assistant Collector rejected the refund claim on the ground that the revised classification list claiming the assessment at Nil rate of duty was not filed. When the matter was taken up before the Collector (Appeals), he observed that the revised classification list has already been filed by the respondents on 22.1.1987 and approved by the Assistant Collector and hence the refund claim should be entertained. Against the order of the Collector (Appeals) the Department has now come in appeal.

3. As seen from the grounds of appeal, it is observed that the only ground on which the appeal is filed is on the ground of undue enrichment and the department seeks to rely on the judgment of the Bombay High Court in the case of Roplas India Ltd. v. Union of India .

4. Shri C.P. Arya, the learned SDR, contended that in this case, firstly they have filed the revised classification list only on 22.1.1987 and this classification list is effective only thereafter, whereas the refund claim has been made for the period prior to that. He also pointed out that the protest was made only on 28.11. 1986 and is valid only thereafter. He also cited the following judgment in support of his claim that the High Courts have taken consistent view where the amount is going to enrich the assessee that can be denied to them: (i) Associated Bearing Co. Ltd. v. Union of India 1988 (33) ELT 28S (Bombay High Court)-i988 (14) ECR S (Bom.) (ii) Bharat Vijay Mills Co. Ltd. v. Union of India (Guj.) : 1984 ECR 2645 (Guj.) 5. After hearing the learned SDR Shri C.P. Arya, heard Shri C.S. Lodha, the learned advocate. He sought to refer to the judgment of the Madras High Court in the case of Tube Products of India v. Union of India. He also referred to the relevant portion of the aforesaid judgment wherein it has been clearly held that when the statute, namely Section 11B clearly provides for grant of excess duty paid, the authorities cannot deny the benefit.

6. After hearing both sides, we find that the facts of the present appeal filed by the department are identical to the one decided by this Bench by its order No. 117-119/1990/WRB dated 22.1.1990, wherein we have given detailed reasons and also agreeing with the ratio of the decision of the Cegat Special Bench 'D' in the case of Anand Metal A Steel Works v. Collector of Central Excise , rejected the appeals filed by the Department.

7. Shri C.P. Arya, the learned SDR, tries to make a distinction that the facts of the present appeal are not identical to the ones decided by this Tribunal earlier, on the ground that in this case the revised classification list has been filed only on 22.1.1987 and the refund has been sought for the period prior to that. We are not inclined to accept the plea that the facts are different on this score. It is not disputed that the refund has been claimed in respect of the duty paid for a period

of six months prior to the date of claim for refund. If it is so, the facts are identical. Even in the ground of appeal the only ground on which the appeal has been filed by the department is the ground of unjust enrichment. The authorities functioning under the statute are to entertain the refund claim only under the provision of Section 11B of the Act and if the claim is within the period of the time limit prescribed therein and if on merits they are satisfied, the assessees are entitled to refund. There is no other option available to them but to grant refund. This is the view which has been held by us, and there is no reason for us to take a different view because of the citations now made by the learned SDR. We have looked into the judgments cited by the learned SDR and we observe that in all those cases, the High Courts have taken a view applying the principles of Contract Act and also in exercise of their Writ jurisdiction under Article 226 of the Constitution of India whereas here in the case before us, the departmental authorities exercised powers under the Central Excises and Salt Act, 1944 particularly with reference to Section 11B of the Act, where there is no provision for rejection of the claim on the ground of unjust enrichment or on other considerations, so long as the claim is maintainable on merits, and is filed within the time limits laid down in that section. The authorities functioning under the statute cannot invoke extraordinary powers conferred on the High Courts, while dealing with the Writ Petitions.

8. We, therefore, see no reason to take a different view other than the one already taken by us in our order No. 117-119/90-WRB dt. 22.1.1990 (copy of order-to be enclosed). In view of this, we reject the present appeal) of the Revenue.