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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-23-1990

Reported in : (1991)LC681Tri(Delhi)

Appellant : Collector of C. Ex.

Respondent : U.P. State Sugar Corpn. Ltd.

Judgement :
"Whether refund/rebate claim of the assessee received by the Inspector of Central Excise Range on a certain date is to be deemed to have been received by the Assistant Collector of Central Excise, on the date in view of the express provision of Section 11B(1) of the Central Excises and Salt Act, 1944, which stipulates that any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of 6 months from the relevant date which is the date of payment of duty in the instant case. The Rebate claim was actually received by the Assistant Collector after the expiry of six months from the relevant date".

2. In order to appreciate the aforesaid question, brief facts of the case as found by the Tribunal in its order No. A/96/90-NRB dated 6-3-1990 are set out below :- "From a resume of the facts as stated above it is clear that in the instant case the Sector Officer entertained the refund application, although according to Section 11B of the Central Excises and Salt Act, the refund claim was to be filed before the Assistant Collector. It is true that there is nothing on record to show that there was any practice in the Collectorate concerned for receiving the refund claim in the

Sector Office at the relevant time. Thus, if the Sector Officer had not taken any action on the refund application filed by the appellants, the position would have been different; but in the present case the Sector Officer took various actions on the application and asked the appellants to do certain acts to enable him to finalise the refund claim and forwarded the same to the Assistant Collector. In view of this the refund application filed by the appellants have to be treated to have been received by the Sector Officer on behalf of the Assistant Collector of Central Excise. In this view of the matter we are supported by the judgment rendered by this Tribunal in the case of Prag Vanaspati Products v. Collector of Central Excise, 1989 (43) ELT 325. In that case the Bench noticed the case of Collector of Central Excise v. Prag Vanaspati Products, 1987 (27) ELT 337, wherein it was held that time-limit prescribed for filing the refund claim should be observed in the absence of any practice during the relevant time for receiving the refund claims by the Range Superintendent but distinguished the same observing that this ratio would not apply where the Range Superintendent to whom the claim was submitted took action to enable him to finalise the refund claim and ultimately forward the same to the Assistant Collector. The material portion reads thus - "This fact distinguishes the present case from the appellants' case reported in 1987 (27) ELT 337. In the present case, the Superintendent entertained the refund application although according to the amended Rule 11 of the Central Excise Rules the refund claim was to be filed before the Assistant Collector of Central Excise and during the relevant period there was no practice in Kanpur Collectorate for receiving the refund claims in the Range Office. If the Range Superintendent did not take any action on the Refund application, the position could be different; but in the present case the Range Superintendent took action on the application and asked the appellants to furnish the Treasury Challans to enable him to finalise the refund claim and forwarded the same to the Assistant Collector. In view of this, in the interest of justice to the appellants, we direct that this refund application may be treated to have been received by the Superintendent on behalf of the Assistant Collector of Central Excise and the refund be granted to the appellants, if otherwise admissible. We, therefore, set aside the impugned order and allow the appeal in the above term".

Following the ratio of the said decision we hold that in the peculiar facts and circumstances of the present case the refund/rebate claim was filed within time. Consequently, we set aside the impugned orders with the direction that the refund/rebate claim be granted to the appellants, if otherwise admissible".

3. Learned DR for the department urges that the legal position is quite clear inasmuch as Section 11B envisages that the refund claim is to be filed before the Assistant Collector of Central Excise. Accordingly, the date of filing of the refund claim by the respondents herein, before the Inspector of Central Excise (Sector Officer), even-though the refund claim is addressed to the Assistant Collector, would not be the material date for the purpose of computing the limitation under that Section. The limitation will have to be computed with reference to the date of receipt of the refund claim in the office of the Assistant Collector. Hence a question of law arises whether the Tribunal was ight, in the facts and circumstances of this case, to count the time-limit with reference to the date of receipt of the refund claim in the Sector Office.

4. Learned advocate, Shri M. N. Mathur for the respondents has urged that the finding of the Tribunal holding the refund claim to be in time is on the peculiar facts and circumstances of this case. This finding is clearly a matter of appreciation of evidence. Therefore, no question of law arises out of the order of the Tribunal. Hence, he urged that the reference application be rejected.

5. We have carefully considered the pleas advanced on both sides.

Findings of fact in the Tribunal's order have already been set out above. It is in the peculiar facts and circumstances of this case that the refund/rebate claim was held to have been filed in time. It was admitted to the applicant-Collector that the refund claim was addressed to the Assistant Collector even though it was filed before the Sector Officer. The Sector Officer entered into a correspondence with the respondents regarding the refund claim so filed. It is in these circumstances, following the earlier decision of the Tribunal in 1989 (43) ELT 325 [Prag Vanaspati v. CCE] that the refund claim was held to be within time even though filed before the Sector Officer.

6. Apart from the foregoing, we also notice that a reference was made to Kerala High Court on the following three questions in the case of Talayar Tea Co., Munnar v. CCE, Cochin [1990 (30) ECR 518 (Ker.)] from the South Regional Bench :- 1. Whether under the provisions of Rule 11 of the Central Excise Rules, 1944, as it existed then, an application for refund has to be made to the concerned Assistant Collector? 2. Whether any person claiming refund of any duty paid by him could make an application addressed to the Assistant Collector of Central Excise and submit the same to the Superintendent under whose jurisdiction the claimant's factory is situated? 3. Whether, in the latter event, for computing the time-limit of six months under Rule 11, the date of receipt of application by the concerned Superintendent of Central Excise should be taken as the date of receipt of the application by the proper authority :- (b) on or after 23-5-1979, the date of the Trade Notice No. 112/79 issued by the Collector of Central Excise, Cochin?" We answer this question in the affirmative. The application for refund has to be made (addressed) to the concerned Assistant Collector. In the present case it was so done.

We answer the first limb of this question in the affirmative. We answer the second limb in the affirmative insofar as the Revenue held out as in this case that the Superintendent was authorised to receive the application and transmit it to the Assistant Collector, consistent with the previous practice.

In the light of our answers to questions Nos. 1 and 2, the only relevant question is, when was the application for refund made to the Assistant Collector? It was certainly before the expiry of six months from the date of payment of duty. The fact that the application, addressed to the Assistant Collector, was received in his office on a later date is of no consequence. The date on which the application was presented or submitted to the Superintendent of Central Excise should be taken as the date of receipt of the application by the proper authority, which, admittedly, in this case is within the time allowed by law. It is academic to answer question No. 3(a) & (b), since the practice at present seems to be to file the application directly before the Assistant Collector.

7. In view of the decision of the Kerala High Court no question of law survives now. Accordingly, the reference application is dismissed.

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