

Collector of Central Excise Vs. Niranjan Battery Corporation

Collector of Central Excise Vs. Niranjan Battery Corporation

SooperKanoon Citation : sooperkanoon.com/606

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-07-1983

Reported in : (1984)(16)ELT292Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Niranjan Battery Corporation

Judgement :

1. This appeal filed by the Collector, Central Excise, Bombay-I, arises out of and is directed against the Order-in-Appeal No.A-2011/BI-383/82 dated 7-12-82, by which the Collector (Appeal;) set aside the Order-in-Original No. V (31) 18-1/79 dated 13-9-77 passed by the Assistant Collector, Central Excise, rejecting the refund claim of Rs. 2870/- made by the respondents herein.

2. The facts necessary for the disposal of this appeal are not in disputed. The respondents, M/s. Niranjan Battery Corporation lodged a claim for Rs. 2870/- of duty paid falling under T.I. No. 31 during the period from April 1978 to July 1978 under compounded levy on battery parts. This claim was stated to have been lodged on 22-3-79. The Asstt.

Collector rejected the claim on the ground that it was barred under Rule 11 of the Central Excise Rules, 1944, which will be hereinafter referred to as 'the Rules'. Feeling aggrieved the appellant preferred an appeal before the Collector (Appeals) Central Excise, Bombay. They contended that Rule 11 has no application to their case as the amount was paid on account of compounded levy on battery parts.

They further urged that they did not pay the duty through mistake or paid since their classification list claiming full exemption of duty under Govt.

of India's Notification No. 71/78-C.E. dated 1-3-78 was not approved by the proper officer. They further stated that they were communicated of the exemption they are entitled only on 4-1-79. The Collector (Appeals) considered the contentions urged before him, and held that the claim was not barred by limitation under Rule 11 of the Rules referred to above. The Collector (Appeals) further held that the payments made by the appellants were not in the nature of duty, but as advances against duty payable by them during the months of April 78 to July 78, and as such the refund is due to the appellants before him and it was not hit by the limitation prescribed under Rule 11. In that connection the Collector (Appeals) also relied upon the decision of the Govt. of India reported in 1981-E.L.T. 304 (GOI) and also on another decision of the Govt. of India reported in 1982-E.L.T. 608 (GOI). Having regard to his findings, he set aside the order of the Asstt. Collector and allowed the appeal of the present respondent with consequential relief.

3. Feeling aggrieved by the order of the Collector (Appeals) as stated earlier, the Collector of Central Excise, Bombay-I in exercise of his power under Sub-section (2) of Sec. 35-B has preferred this appeal.

4. Shri N.K. Pattekar, the learned J.D.R. contended that admittedly the respondents paid duty between 27-3-78 and 22-6-78, and therefore, their application for refund made on 22-3-79 beyond the period of 6 months was clearly barred and in the said circumstances, the Collector (Appeals) committed an error in holding that the claim was not barred.

Shri Pattekar also urged that the observation contended in the learned Collector's order that the payment made by the appellants were not duty but advances is incorrect. He contended that the relevant rule that is applicable to the facts of the case is Rule 96YY of the Rules.

5. As we were satisfied that the appeal did not merit under consideration we did not call upon the respondent to address any arguments. The other question for consideration is whether the order passed by the Collector (Appeals) requires to

be interfered with. The refund amount claimed in this place is only Rs. 2870/-. The Collector (Appeals) relying upon the two orders of the Govt. of India in similar matters has thought fit to grant relief. Shri Pattekar did not contend before us that the two orders of the Govt. of India relied upon by the Collector (Appeals) are not applicable to the facts of the case. This circumstance alone would have been sufficient for us not to interfere with the order of the Collector (Appeals). Be that it may even otherwise also the order of the Collector (Appeals) in our view does not suffer from any error of law. Admittedly the respondents had opted for special procedure and were discharging their duty liability at a compounded rate as provided by Rule 96 YY of the Rules. The Govt. of India Notification No. 71/78-C.E. dated 1-3-78 granted exemption of levy of duty on goods specified under that Notification to the first clearance value of the goods of Rs. 5 lakhs subject to certain conditions. The exemption granted under that Notification apply to the goods of the respondents. Therefore, the respondents filed a classification list claiming exemption under the said notification and it was approved by the proper Central Excise Officer on 21-7-78. In the circumstances the application made for claiming exemption shall have to be treated as an application for necessary relief including the refund if any, they are entitled to. Since that application was very much within the limitation prescribed under Rule 11 the question of their claim being barred under the said rule does not arise. The subsequent letter dated 22-3-78 addressed to the Supdt. should in our opinion be treated as a reminder to the departmental authorities to grant the statutory relief to which the respondents were entitled. This apart the perusal of Rule 96 YY makes it clear that a statutory obligation cast on the Central Excise Officers to recalculate the duty whenever there is alteration in the rates of duty or in the limit of exemption, and thereafter, to refund to the manufacturer in case the amount of duty so recalculated be less than the sum paid by the manufacturer. Rule 96YY is a complete code by itself. There is no question of making any claim for refund and therefore, in respect of matters which fall within the ambit of Rule 96 YY, the provisions of Rule 11 are not attracted. The payment of duty the manufacturer was required to do under the said rule appears to be in the nature of provisional payment. Otherwise there was no rule provided under the proviso for recalculation, and thereafter the refund of duty if the amount of duty paid on recalculation be less than the payable.

6. On careful consideration of all the aspects we see no merit whatsoever in this appeal, and accordingly, we dismiss the same.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com