X.L. Plastics Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-03-1991

Reported in : (1991)(56)ELT82TriDel

Appellant : X.L. Plastics

Respondent : Collector of Central Excise

Judgement :

1. In this appeal the appellants are aggrieved by the order dated 18-3-1987 passed by the Collector of Central Excise (Appeals), Bombay by which he has confirmed the order-in-original No. 7/Ref/86 dated 24-4-1986 passed by the Assistant Collector of Central Excise, Vadodara by which he had rejected the refund claim of the appellants of Rs. 12,601.43 P.2. The appellants are the manufacturer of Polyethylene bags with the aid of power. They filed a refund claim of Rs. 48,388.63 P. being the duty of excise paid by them on Polyethylene bags during the period 22-4-1982 to 16-7-1982 on the ground that - (1) with the issue of Notification No. 149/82-C.E., dated 22-4-1982, all non-specified articles of plastics, except the three mentioned in the said notification, became fully exempted from payment of duty.

(2) with the enactment of Finance Bill, 1982, non-specified articles of plastics become classifiable under Tariff Item 68 and that they were continued to be exempted by virtue of Notification No. 182/82-C.E., dated 11-5-1982.

(3) polyethylene and polypropylene bags are fully exempted from payment of excise duty w.e.f. 22-4-1982.

The appellants had classified the goods under Tariff Item 68 and had paid duty at 8% ad valorem. The exemption Notification No. 283/82-C.E.exempting articles of plastic falling under Tariff Item 68 from payment of duty w.e.f. 11-5-1982 only.

3. A show cause notice dated 26-11-1985 was issued to the appellants to show cause as to why the refund claim should not be rejected as time-barred under Section 11B of the Act.

4. The appellants referred to the order of Collector (Appeals) dated 4-2-1985 and submitted that in view of the said order, the refund would be payable.

5. The Assistant Collector in the order-in-original has observed that the order-in-appeal dated 4-2-1985 passed by Collector (Appeals) Bombay pertained to the classification list filed by the appellants in respect of 'polyethylene and polypropylene bags' falling under Item 68 claiming exemption from payment of duty as envisaged under Notification No.182/82-C.E., dated 11-5-1982. The Asstt. Collector observed that the Collector (Appeals) although had allowed their claim for refund of duty but it did not convey any directions to allow suo moto refund as the order has clearly stated the refund to be granted "if otherwise admissible". The Assistant Collector after examining the said order of Collector (Appeals), held that the appellants were not entitled for refund of Rs. 12,601.43 P. out of the claim of Rs. 48,332.56 P. which represented the duty paid under Item No. 68 on Polyethylene and Polypropylene bags manufactured and cleared by the appellants under Gate passes in Form G.P. 1, Heading No. 55/22/.4.82 to 69/8.5.82 and making debit entries in their PLA. The ground for rejection of claim has been that exemption Notification No. 182/82-C.E. exempting articles made of plastics falling under Tariff Item 68 from payment of duty is effective only from 11-5-1982 and earlier Notification No. 149/82 dated 22-4-1982 do not envisage exemption of payment of duty of excise leviable on the goods falling under specifically classified by the assessee under Tariff Item 68 as all other goods N.E.S. The Collector (Appeals) has confirmed these findings.

6. Shri R.K. Jain, learned Consultant appearing for the appellants, submitted that Rule 173B and Section 11B are independent of each other and Rule 173B cannot override the Section 11B of the Central Excises & Salt Act, 1944. However, he submitted that the party admits having not disputing the classification list approved on 9-3-1982 as during the material time, specially during the disputed period 22-4-1982 to 10-5-1982, there was no dispute regarding the classification list and there was no dispute when revised classification list No. 111/46 was filed on 22-6-1982. However, the party having filed the refund claim within 6 months under Section 11B, the claim cannot be rejected under Rule 173B of the Rules. He further submitted that approval of classification list does not affect the right of refund claim under Section 11B of the Act. He further referred to Sub-section (3) of Section 11B and contended that there is no need to file another refund claim if order is passed with consequential relief. The Collector (Appeals) initially had allowed the appeal of the assessee by order dated 4-2-1985 and had directed the Assistant Collector to grant refund which were admissible under law and therefore, the Asstt. Collector was bound by that order and he could not have rejected the part refund claim when appeal had been decided in their favour.Collector of Central Excise v. Stewards & Lloyds of India Ltd., CalcuttaModi Rayon & Silk Mills v. Collector of Central Excise -1988 (34) ELT 321Alpha Electric Products v. Collector of C. Ex., Calcutta -1987 (30) ELT 752Britannia India Ltd. v. Collector of C. Excise, Calcutta -1987 (31) ELT 985 He fairly brought to our notice a few citations which were contrary to the views expressed in the above rulings and submitted that this Bench should pronounce a correct view by referring the matter to a Larger Bench for a decision.Aditya Mills Ltd. v. Collector of Central Excise, Jaipur -1983 (14) ELT 1853 Collector of Central Excise, Thane v. Indian Dyestuff India Ltd., BombayModi Rayon & Silk Mills v. Collector of C. Ex., Meerut -1987 (29) ELT 933 (4) Herschal Rubber (P) Ltd. v. Collector of Central Excise -1987 (30) ELT 454.

7. Shri L.N. Murthy, learned JDR defended the orders of the lower authorities and submitted that the order of Collector (Appeals) dated 4-2-1985 in favour of assessee did not decide the time factor of refund claim but directed the Assistant Collector to grant refund wherever it was admissible and hence the submission of the appellants that the question of time-bar had been decided in their favour is incorrect. He relied on the ruling of the Calcutta High Court as rendered in the

case of I.T.C. v. Union of India reported in 1988 (34) ELT 473.

8. We have carefully considered the submissions made by both the sides and perused the records. The question that arises for our determination is as to whether the claim for refund of Rs. 12,601.43 P. for duty paid for polyethylene and polypropylene bags under Item 68 of the CET and not available for exemption from payment of duty under Notification No.182/82-C.E., dated 11-5-1982. There is no dispute as regards the classification list being approved and payment of duty having been paid without protest in this case. The appellants had filed refund claim only after the issue of Notification No. 182/82-C.E., dated 11-5-1982 for payments made on clearances prior to the date of the notification in question which granted exemption to goods falling under T.I. 68 of CET. Therefore, the appellants claim that the goods ought to have been considered as having fallen under T.I. 15A(2) of CET as articles of plastic and that these were eligible for exemption from payment of duty as envisaged under Board's letter F. No. 13/22/83-CE.I dated 5-6-1984, is not sustainable, in view of the fact that the classification list was approved and they had also not challenged it or made payment of duty under protest. This is not a case of payment of duty under mistake of law and goods not being dutiable to seek refund exclusively under Section 11B. It is also not a case where the Collector (Appeals) by his order dated 4-2-1985 had decided the question of limitation regarding time-bar in favour of the Revenue. He had only directed the Asstt.

Collector to grant refund wherever is admissible. The Assistant Collector in the impugned order-in-original dated 24-4-1986 has held that on the facts and circumstances of the case, the refund has arisen only under Notification No. 182/82 dated 11-5-1982 which envisage exemption for goods falling under T.I. 68 of CET and applicable from 11-5-1982 and therefore, has granted refund from this date and rejected for the earlier period. The Collector (Appeals) by the impugned order dated 18-3-1987 has upheld the findings of the Asstt. Collector. We do not see any infirmity in the order. The appellants having not get the goods classified under T.I. 15A(2) of CET nor having challenged the classification and also having not paid the duty under protest, therefore, cannot now raise reclassification of goods retrospectively and seek refund of duty pertaining to that period. The payment of duty under Rule 9B on provisional assessment of duty or under Rule 173B or under Rule 233B of the Rules are independent and are self-contained provision independent of Section 11B of the Act. There is a saving clause under sub-rule (4) of Section 11B which states "(4) Save as otherwise provided by or under this Act, no claim for refund of any duty of excise shall be entertained." As such, the claim of refund in this case has arisen only after the issue of Notification No.182/82-C.E., dated 11-5-1982 and the lower authorities have rightly dealt with the claim of the appellants from the date of its applicability.

9. We will examine the case law cited by both the sides. In Re : Bijlee Products (India) P. Ltd. (supra), the Govt. of India held that "Government observe that merely because the petitioners did not file an appeal against the approved price list, they are not estopped from a refund claim later if they felt that the refund was due to them". This citation is not directly on the fact of the case and is not helpful to the assessees.In Collector of Central Excise, Calcutta v. Stewards & Lloyds of India Ltd., Calcutta "We have given careful thought to the arguments on both sides. While the Department has not rebutted the respondents plea for dismissal of its appeal for not having complied with the Bench's order rejecting the request for stay of the impugned order. We do not find any force in this contention of Shri Ganguli. The order rejecting the stay application filed by the appellants did not give positive directions to the appellants nor is payment of the amount ordered by the Appellate Collector to the respondents a pre-condition for the present appeal unlike requirements of Section 35F of the Act. We, however, do see considerable force in the other grounds urged by Shri Ganguli. The order has also not dealt with the reasons for granting refund in the case of the sister concern; or for taking a belated objection in this case, after obtaining the required receipt and preparing the cheque. It has raised mainly legal pleas for refusing the refund. The basic fact in this case is that the respondents protested as early as March 1975 that the goods were not liable to duty and they were allowed to pay duty under protest. The letters were addressed to the Collector's office and the department has produced no evidence that these protests were ignored or the respondent was informed to appeal against the classification list dated 2-5-1975 as this was tantamount to rejection of their protest made to the Collector's office in March/April 1975. On the contrary, they persisted in agitating the matter and finally succeeded in getting an

appealable order from the Collector. Whether this order involves a review of the final orders approving the classification by the Assistant Collector or not, there is a definite nexus between the protests earlier lodged and the one dated 6-7-1979. There is also force in the respondent's plea that they were compelled to file the classification lists and pay the duty, now in issue. As far as the law is concerned Section 173B(3) contains a clear provision for payment of duty under protest at the rates approved by the officer and sub-rule (5) stipulates that when the dispute about the duty has been finalised, the proper officer shall make such modification and inform the assessee accordingly. By Rule 173J, in force prior to 1980, Rule 11 was applicable to refunds. This provides that an application for refund should be made within 6 months from the date of payment of duty and since 1977, also provided that this limitation shall not apply where any duty has been paid under protest. This latter provision only expressly made clear a principle that a protest lodged simultaneously with payment of duty was tantamount to claiming a refund. The department has not adduced any proof that the Superintendent or the A.C. or the Collector had rejected the protest made in 1975. Having informed the Collector's office that they may be allowed to pay duty under protest on 13-5-1975, it is reasonable to hold that the dispute remained unsettled. The Superintendent's indirect communication of the A.C. having approved the classification list was hardly an order-in-original, a reply to the protest made to the Collector; or an appealable order as the department would have us believe. In that view of the matter, the protest would be technically still alive and there would be no question of any time-bar. In these circumstances, it would be neither legal nor proper to hold that the protests were deemed to have been extinguished since no appeal was filed." This ruling is quite distinguishable and not applicable to the facts of this case.

In Alpha Electric Products case (supra), the Tribunal held that an assessee cannot be disentitled to claim refund merely because the approval of price list went unchallenged or because R.T. 12 return has become finalised. The Tribunal held that this case was similar to Stewards and Lloyds case referred to above and applied that ratio. This case is also distinguishable as the party had lodged protest in those cases while the situation is not the same in this case.

In Modi Rayon & Silk Mills case, the Tribunal found that clearances made on provisional assessments and held the refund claim to be within time. The facts are also distinguishable.

In Britannia Industries Ltd. case, the reference made by Bench regarding non-filing of appeal against approval of price list and rejection of claim of refund as not justified was also on different footing on the facts and circumstances of the case and the ruling is distinguishable and not on all favours on the facts of this case.

10. The following rulings are more on the point and the ratio of these cases apply to the facts of the case.

In Aditya Mills Ltd. case (supra), the Tribunal held that if the appellants did not dispute the classification list as conveyed to them by the Department, they would be deemed to have accepted the classification list as determined by the Department. So the excise duty was rightly levied and collected and refund claim was rightly rejected.

In Indian Dyestuff Industries Ltd. (supra), the Bench held that respondent-assessee not being aggrieved because the determination of the assessable value was fully in accordance with the declaration in the price lists filed. The approval of price lists and the assessments had become final not having been appealed against. An application for refund, if allowed, will be directly inconsistent and conflicting with the orders in assessments which had become final and cannot, therefore, be sustained.In Modi Rayon & Silk Mills v. CCE, Meerut (supra), the findings of the majority of the Bench at Paras 74 to 85 is reproduced below, which ratio fully applies to the facts of this case - "The purpose of Rules 173B and 173C, in the context of self assessment and self removal, is obvious that questions relating to classification and valuation of goods proposed to be cleared should be determined in advance by the proper officer, so that thereafter, the assessee may proceed to clear his goods on his own, subject to submission of the prescribed returns. It is also a fact of which the Bench can take notice that if the declaration of rate of duty or value in a classification list or price list is not approved as claimed by the assessee, latter is free to go up in appeal against that decision." It is also a fact of which notice can be taken that the R.T. 12 returns furnished by the assessee are subsequently scrutinised and finalised by the Central Excise Department with reference to the approved classification list and price list.

Under this scheme, it can legitimately be expected that an assessee whose declaration of classification or value is approved only with modification by the proper officer (which in effect means it is not approved) would seek a modification of that officers decision. We can take note that this is actually being done in a large number of cases.

The question would then arise as to what would be the purpose of Rule 11 or Section 11B in such circumstances. If the assessee has either to challenge the approval of the classification list or price list, or abide by those approvals, what is the use of a provision giving him the right to claim refund of duty (which could be on the ground of incorrect classification or valuation) within six months (or other prescribed period) from the applicable date? To this the answer can be that a claim for refund may lie even without challenging the approval of the classification list or the price list.

One type of case may be where the rate of duty or the value on the basis on which a particular clearance was made may not be in accordance with the approved lists or price lists. The assessee himself may have inadvertently adopted a wrong rate of duty or value. Alternatively the officer completing the assessment on the R.T. 12 form may have applied a rate of duty or value which is not in accordance with the approved rate of duty or value. A second type of case may be where there has been a typographical or arthmetical mistake in the clearance of documents leading to payment of excise duty. There could be other cases also where a claim for refund of duty would like even on the basis of the approved rate of duty or value. In such cases, Rule 11 or Section 11B would certainly come into operation. It cannot therefore, be said that the proposition advanced in Para 76 supra renders these provisions redundant.

The view urged on behalf of the appellants would involve some other difficulties with reference to the scheme of Central Excises and Salt Act and the rules thereunder. Chapter VIA of the Act lays down a detailed procedure for appeals against any decision or order passed under the Act by any Central Excise officers.

Section 11B in Chapter II ibid, provides a procedure for claiming refund of duty. That section specifically provides that it is the Assistant Collector of Central Excise to whom the refund claim should be addressed. It also makes it the duty of the Assistant Collector to order a refund, if he is satisfied that one should be made. Now a classification list or price list is ordinarily approved at the level of an Assistant Collector; on occasion it may be approved at the level of the Deputy Collector or even the Collector. It could hardly have been the intention of the legislature that an Assistant Collector in the course of considering a refund claim, should be able in effect to sit in appeal over a decision (on the classification lists or price lists) of his Collector. This difficulty would remain even if such a refund claim were to be referred upwards to the Deputy Collector or the Collector.

The position that emerges is that an assessee who does not agree with a decision on a classification list or a price list can challenge it directly by appealing against that decision and now indirectly by filing a refund claim on an assessment based on that decision. In taking this view it will be seen that no provision of Central Excises and Salt Act and Rules is rendered redundant, not in their any appearance illogically or injustice in their application. It is for the assessee to make his declaration or classification (including rate of duty) and value. If his declaration is not accepted in toto, but approved with some modification, it is open to him to appeal against such modified approval, and in the mean-time to make effect clearances on the basis of the modified approval [Section 11B(1)] refers to also to payment of duty under protest. In such cases, the making of a protest may be superfluous, in view of [Section 11B(3) but there would be other types of claims where it would be necessary]. If subsequently the assessee considers that duty has been paid in excess, even on the basis of the approved price list or classification list, he can make refund claim on that basis within the prescribed limitation period.

However, in the event of his winning his appeal, the duty which would be determined as having been paid in excess in terms of the decisions in appeal would be refundable to him even without a specific claim for refund, in view of the provisions of Section 11B(3).

In the light of this understanding of the relevant provisions, we may consider the authorities cited on both sides. Member Sh. Jain has referred to the judgment of the Karnataka High Court in the case of Shyam Sunder U. Nichani v. Assistant Collector of Central Excise, Bangalore 1985 (22) ELT 751. That judgment, by a learned Single Judge of the Karnataka High Court had reference to Section 11A which is a recovery provision. Sections 11A and 11B although in a sense complementary are not really pari pasu. Thus, Section HA provides for two different time limits. It also provides for a issue of a show cause before a demand is actually made. Section 11B does not contain corresponding provisions. It would not therefore, be proper to apply to Section 11B observations made with reference to Section HA.Shri Jain has also reproduced Para 4 of the Tribunal's order in another set of cases of the same appellants but for a different period and apparently in somewhat different circumstances. In that order, reference has been made to a reported decision of the Tribunal in the case of Sirpur Paper Mills 1984 (15) ELT 461, and also unreported Orders No. C-117 and 118/85, dated 26-2-1985. It is also recorded that the learned Advocate read out the relevant portions of these decisions.

The reference to the Tribunal's decision in the case of Pure Drinks, Calcutta does not appear to be correctly cited, since the two orders bearing the Nos. given relate to some other parties and bear dates other than 26-2-1985. I have however, seen the Tribunal's decision in the case of Sirpur Paper Mills. On a careful consideration, it appears that the decisions there was given with reference to the facts of that particular case, the important fact being that even to begin with the assessee protested against the action of the Assistant Collector in changing the classification of the goods in question. It is difficult to derive from this order a categorical enunciation of the principle that a claim for refund would lie even in a case where there was not merely no protest against the Assistant Collector's decision on the price list, but the price list was approved by the Assistant Collector without any modification.

The order of a two Member Bench of the Tribunal in another batch of cases of the present appellants in which the above cases, find mention, does not contain any independent discussion of issue and therefore, does not require separate consideration.

As against the above-mentioned cases, there is the case of Aditya Mills Ltd., Rajasthan relied upon by the SDR 1983 (14) ELT 1853. In that case, a three Member Bench of the Tribunal observed as under - We also do not find any merit in the contention that the procedure of Rule 173B was not observed because it was for the appellants to contest the decision at that stage when they were asked to file a revised classification list. The Assistant Collector is right in observing that since that they did not dispute the classification list, they could not do so by means of a refund claim.

The learned Member Sh. Jain has considered this as in the nature of passing observation. However, it cannot be said to be a casual observation or one without weight. As a matter of interest, it may be seen that one of the Members of the Bench in the case of Sirpur Paper Mills was also the Member of the Bench in the case of Aditya Mills Ltd. Accordingly, even without having to go into the other aspects which I have mentioned, I would agree with Member Shri Murthy that in the light of the contents of the price list (which were not contested through appeals, there is nothing to be adjudicated and therefore, no purpose in a remand)." 11. The ratio of Herachal Rubber (P) Ltd. case is same as in Modi Rayon's case and it has applied the same ratio.

12. However, it has to be observed that the Calcutta High Court in the case of I.T.C. v. Union of India as reported in 1988 (34) ELT 473 at Pages 501, 502, 503 has disagreed with the views expressed by the Tribunal in the case of Modi Rayon & Silk Mills case and has held that if the interpretation of the Tribunal is accepted, than it would result in disastrous effect and that would make the provision of Section 11B(1) complete nugatory and unworkable and therefore, the view of the Tribunal would defeat a claim for refund on a proposition which if accepted would produce a wholly unreasonable results and the view is erroneous.

13. The view of the Calcutta High Court has found favour with South Regional Bench in the case of Collector of Central Excise v. Mysore Acetate & Chemicals Co. Ltd. 1990 (47) ELT 687 (Tribunal) as observed by it at Para 4 in Pages 688 and 689 which is reproduced below - "We have carefully considered the

submissions made before us. It is not disputed by the Department that the respondent is entitled to the benefit of the notification in question and that the refund was not granted on the ground the respondent herein did hot make a specific claim of the said notification in the classification list filed. This argument of the learned DR cannot be acceded to. The ruling of the Special Bench in Delhi Chemicals case comprising three learned Members, was rendered on 27th June, 1988, where an identical issue arose for consideration that was also a case where the refund claim of the party was rejected on the ground that the party had not made a claim for the benefit of Notification No. 80/80 in their classification. The Special Bench held in that case as under - We have carefully considered the submissions of both the sides. In the case of Ceat Tyres (supra), the Bombay High Court has held, in the context of Section 72 of the Indian Contract Act, that the department cannot be allowed to take advantage of the mistake committed by the petitioner in paying a higher amount to the departmental and the department cannot be allowed to retain any such amount which it would not have received but for the mistake on the part of the petitioner in paying it in the first place. In the case of Sahu Cylinders (supra), this Tribunal rejected the contention that merely because an assessee paid duty voluntarily in excess, he is not entitled to claim refund thereof.

In the present instance also, the appellants cannot be denied the benefit of Notification No. 80/80 only on the ground that they had paid duty without claiming its benefit at the time of clearance of the goods. We, therefore, set aside the orders of the lower authorities and remand the matter to the Assistant Collector for de novo consideration of the claim with reference to Notification No. 80/80 and other provisions of law.

The Supreme Court in Elson Machines case has repelled the contention of the party that once a classification list is approved, the Excise authority was estopped from taking a different view. The Supreme Court held that there can be no estoppel against the law and the claim raised before us is a claim based on the legal effect of a provision of law and therefore, this contention must be rejected.

The Calcutta High Court has also in the case of ITC Ltd. v. Union of India and Ors. reported in 1988 (34) ELT 743 (Cal.), held that Section 11B of the Act has provided the substantive and the machinery provision for refund of any excess duty paid under Section 11B cannot be interpreted in such a way as to render it negatory and unworkable. In such a situation, merely because either due to ignorance or due to inadvertence the respondent did not claim the exemption in the classification, the respondent cannot be denied the right to claim the refund under Section 11B of the Act. Section 11B confers an independent right and a substantive right on the respondent to claim refund if it is otherwise permissible in law.

The respondent cannot be estopped from claiming the refund merely on the ground that he did not claim the benefit of the notification in the classification. Since the ruling in Modi Rayon and Silk Mills case is that of two learned Members' of the Special Bench and the ruling in the Delhi Chemicals case is a concurrent finding of the view of three learned Members, we follow the ratio of the Special Bench ruling in the Delhi Chemicals case and hold that the respondent is entitled to the refund amount in question. In this view of the matter, we uphold the finding of the lower appellate authority in the impugned order and dismiss the appeal." 14. In view of this finding of the Calcutta High Court regarding the Modi Rayon's case and also of view of S.R.B., the matter requires reconsideration before Larger Bench of Five Members and we recommend the President to constitute the same to decide on this issue in the light of the decision of Calcutta High Court's decision in I.T.C. case and that of S.R.B.'s ruling in Mysore Acetate & Chemical Co.'s case being in conflicting earlier ratio of Tribunal rendered in Modi Rayon's case followed in other cases also.

The Registry shall place these papers before the President for appropriate orders.

15. I have had the benefit of carefully going through the order of Hon'ble Member (Judicial), Sh. S.L. Peeran and I may express the following views: 16. The appellants' claim for refund of duty from 11-5-1982 under Notification 182/82 has already been granted and the dispute is regarding the period prior to it. During that period, even according to the appellants, they had not disputed classification of the

goods under Item 68 CET. The appellants' claim for refund for the prior period is on the ground that they are covered by Notification 149/82 dated 22-4-1982. This, the Department has denied taking the view that Notification 149/82 does not envisage exemption from payment of duty on goods falling under Item 68. They have also, in this context, taken the further argument that approved classification list has not been contested in appeal and there could, therefore, be no refund claim.

Apart from this, it has to be borne in mind that it is a well-settled principle that the assessee, claiming the exemption, has to show that he fulfills the conditions thereto. The onus is upon him. Notification 149/82 relates to articles made of plastics all sorts falling under 15A(2) and it is further found that this notification is not an unconditional one. It extends exemption to the non-specified plastic goods provided such articles are produced out of artificial resins or plastic materials or cellulose esters and ethers in any form falling under sub-item

(1) of the said Item, on which the duty of excise or the additional duty under Section 3 of the Customs Tariff Act, 1975 (51 of 1975), as the case may be, has already been paid; or such articles are produced out of scrap of plastics. Therefore, the appellants, in order to claim exemption, should also have proved that the condition is satisfied. There is nothing on record relating to their refund claim which shows that they have done so. Therefore, on merits, the rejection of the claim for the period prior to 11-5-1982 will be justified and on this reasoning there will be no need to interfere with the order passed by the lower authorities. As for the law on the subject, as has been very lucidly brought out by the Hon'ble Member (Judicial), there has been a diversity of decisions among the Benches of the Tribunal, but the Calcutta High Court decision in the case of ITC Ltd. v. Union of India -1988

(34) ELT 473 as confirmed by a Division Bench of that Court (Appeal No. 80 of 1988 ITC v. UOI, decided on 12-10-1988) has specifically held that the view of the Tribunal in Modi Rayon & Silk Mills -1987

(29) ELT 933 case is wrong and runs counter to the provisions of Section 11B. It is also noted that in another case of Triveni Structurals Ltd. v. Collector of Central

Excise -1987

(30) ELT 707 a Division Bench of the Allahabad High Court had to deal with a case of refund claim in respect of duty paid in 1981-82 in accordance with an approved price list. The High Court rejected on the question of limitation. The significance is that the dismissal was not on the ground that there has been no appeal against the order of approval of the price list. Therefore, admittedly, while the decisions of the Tribunal on this issue are not uniform, in view of the High Court decisions, being those of a higher judicial body, in my humble opinion, these High Court decisions may have to be followed until there is a ruling by the Supreme Court in the matter in future. In this context, it may also be recalled that the Supreme Court decision in the case of Elson Machines -1988

(38) ELT 571 in which the Supreme Court observed that the Department was not barred from taking a different view on classification after having approved the classification list, has further been affirmed by the Supreme Court in the case of Plasmac Machines Mfg. Co. v. Collector of Central Excise, Bombay -1991

(51) ELT 161 (SC) wherein the Supreme Court observed as follows: "The appellants' contention that the department having earlier approved the classification of Tie Bar Nuts under Tariff Item 68 has no justification for its revision is, to our mind, not tenable inasmuch as there could be no estoppel against a statute. If according to law Tie Bar Nuts fall within Tariff Item 52 the fact that the department earlier approved their classification under Tariff Item 68 will not estop it from revising that classification to one under Tariff Item

52. See Elson Machines Pvt. Ltd. v. Collector of Central Excise -1989 Suppl.

(1) SCC 671, Para 10 at 675 : 1988

(19) ECR 449 SC." Therefore, it may not be absolutely essential in the facts of the present case for having a Larger Bench constituted for deciding the issue.

17. Having regard to the facts and circumstances of the case and on a consideration of the evidence on record since we are agreed that on merits the impugned order is correct in law and is upheld, the appeal is disposed of on the

basis of this finding of ours and is accordingly rejected.