Collector of Central Excise Vs. ElgIn Mills Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-31-1991

Reported in : (1991)LC535Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : ElgIn Mills Co. Ltd.

Judgement :

1. Being aggrieved with that part of the impugned order-in-ap-peal, whereby the Collector (Appeals) held that the refund claimed by this respondent for the duty paid prior to 6-8-1977 was not barred under the erstwhile Rule 11 of the Central Excise Rules, 1944, the Revenue has filed the present appeal.

2. The undisputed facts of the case are that the respondents paid the duty for the period prior to 6-8-1977 under protest. But the Revenue in their present appeal contends that since there were no provision under Rule 11 read with Rule 173J of the Central Excise Rules, 1944, to pay duty under protest, the time limit prescribed for claiming refund i.e.

one year, would apply straightaway and since in the first instance the refund claim was received in the office on 16-1-1980, it was time-barred.

3. Arguing on behalf of the Revenue, Shri Jayanarayanan Nair, the learned J.D.R. reiterated the aforesaid contention and on being pointed out by the Bench as to whether there is any decision in favour of the Revenue on this point, he frankly

submitted that there is no such decision to the best of his knowledge. In reply, Shri K.G. Dixit, the learned consultant, submitted that since admittedly the duty was paid during the disputed period under protest, it is immaterial as to whether there was any express provision for payment of duty under protest or not. He also cited a number of authorities to the effect that if there was a payment of duty under mistake of law, it should be refunded ignoring the period of limitation prescribed for claiming such refund. Besides he stressed that in the case of India Cements Limited v. Collector of Central Excise, 1989 (41) E.L.T. 358 (SC), the appellants of that case applied for the refund of duty paid during July, 4, 1974 to March 1,1975 and a covering letter under which the duty was so paid was held to be a letter of protest. In his rejoinder, Shri Nair, the learned J.D.R. admitted that the contention as to whether payment of duty under protest in the absence of any express provision to that effect in the Act or Rules would save limitation or not was not raised before the Apex Court in that case.

4. We have considered the submissions. As aforesaid, in the first instance, there is no dispute that duty was paid under protest. It is also not in dispute that during the relevant time there was no express provision for payment of duty under protest. However, the absence of any express provision regarding the payment of duty under protest cannot take away the right of a person to pay the duty under protest.

It is common knowledge that whenever a tax or duty is demanded and the person concerned does not admit such demand, the only course left open to him is either to pay the duty under protest or to face the consequences like coercive proceedings etc. to safeguard his interest and this is what has been done actually by the respondents in the instant case.

5. In view of the above, we affirm the impugned order-in-appeal passed by the Collector of Central Excise (Appeals), New Delhi and reject the present appeal filed by the Revenue.