

Collector of Central Excise Vs. Rubamine Processors

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-19-1991

Reported in : (1992)(61)ELT716TriDel

Appellant : Collector of Central Excise

Respondent : Rubamine Processors

Advocate for Def. : Shri. Jaideep C. Patel

Judgement :

1. This is an appeal against the order dated 12-6-1986 passed by the Collector of Central Excise (Appeals), Bombay preferred by the Collector of Central Excise, Vadodara. The brief facts of the case are as follows: 2. M/s. Rubamine Processors are engaged in the manufacture of Zinc Oxide falling under T.I. 14 of CET. They commenced manufacture of the aforesaid goods from 1-12-1983 and during the year 1983-84 they cleared the said goods, worth Rs. 6,88,772.50 claiming exemption under Notification No. 83/83, dated 1-3-1983. In the year 1984-85 the assessee filed classification list effective from 1-4-1984 for the said product claiming exemption under Notification 74/78, dated 1-3-1978 (as amended) but they did not indicate that they want to avail exemption under Notification No. 83/83, dated 1-3-1983 during the Financial Year 1984-85 in respect of the aforesaid goods. On the contrary they subscribed declaration to the following effect in the aforesaid C.L.

(4) We do not want to avail exemption as provided in Notification No. 83/83, dated 1-3-1983.

(5) We are willing to pay central excise duties from 1-4-1984 and will not claim refund in future." The aforesaid classification list was approved on 21-4-1984.

Accordingly the assessee cleared the goods at the concessional rate under Notification No. 74/78, dated 1-3-1978. At the close of the financial year, finding the value of the clearances within the permissible limit of exemption under Notification No. 83/83, they filed a refund claim on 9-5-1985 on the ground that due to an error on their part in forecasting the total clearances value for whole year 1984-85 which has anticipated to exceed Rs. 25 lakhs, duty was paid but since their value of clearances during the financial year is within the permissible limit the refund is claimed.

3. The Assistant Collector vide his order-in-original No. R/13/85 dated 8-11-1985 rejected the refund claim because the claim was partly hit by limitation of time and that refund will result in undue enrichment on the part of the assessee.

4. The party filed appeal against the order of the Assistant Collector.

The Appellate Collector allowed the appeal on the grounds that the limitation period will count from the date of closure of the financial year and there is no provision in Section 11B requiring the assessee to pass over the duty refunded to the customers.

5. Shri Narasimha Murthy, Ld. D.R. appearing for the Department, reiterated the grounds of appeal and contended that the Collector (Appeals) was in error in allowing the respondent's appeal on limitation and urged that the time limit of six months from the relevant date i.e. date of payment of duty in this case, as laid down in Section 11B of Central Excises & Salt Act, 1944 would prevail even where the refund claim related to exemption based on value of clearances in a financial year. He cited and relied upon the Tribunal's decision in the case of Asian Bearing Ltd. v. Collector of Central Excise 6. The Ld. Counsel, Shri Jaideep C. Patel appearing for the respondents, submitted that the Assistant Collector had not

taken this ground in his order but had rejected their claim on the ground that since the respondents had collected the duty from their customers granting refund to them would result in unjust enrichment. The Ld.

Counsel cited Bombay High Court decision in 1991 (52) E.L.T. 195 in the case of Bombay Burmah Trading Corporation v. Union of India and in the case of Rubber Products v. Union of India, reported in 1991 (53) E.L.T.299 to say that statutory authorities cannot deny refund on grounds of unjust (enrichment when otherwise due under Section 11B of Central Excises & Salt Act, 1944. The Ld. Counsel also urged that the Department cannot also reject the claim for refund merely on the ground that the respondents had not claimed it initially at the time of filing classification list so long as the refund claim is valid in law and as per provisions of Section 11B of Central Excises & Salt Act, 1944. The Ld. Counsel relied upon the Tribunal's decision in the case of Alpha Electrical Products v. Collector of Central Excise, Calcutta - 1987 (30) E.L.T. 752 and Delhi Chemicals & Pharmaceutical Works v. Collector of Central Excise 7. The submissions made by both the parties, herein, have been carefully considered. The appellant Collector has filed this appeal on the question of limitation as has been indicated by him against Col. 8 of E.A. 3 Form, "The issue involved whether under Notification 83/83, dated 1-3-1983 the limitation period for refund will count from the date of the closure of financial year or from the date of payment of duty as laid down under explanation below 'Section 11B.'" The Tribunal has specifically answered this very question on a detailed examination of the provisions of Section 11B of Central Excises & Salt Act, 1944 and the case law on the subject in its decision in Asian Bearing Ltd. v. Collector of Central Excise - 1991 (51) E.L.T. 532 relied upon by the Ld. D.R. wherein the Tribunal made the following observations. "In this connection it is worth noting, even at the cost of repetition, that Section 11(B) provided for different contingencies and different "relevant dates" for each separate contingency.... There is, therefore, no reason to suppose in the absence of a definition in this behalf, that the "relevant date" for the purpose of claiming refund of duty in terms of an exemption Notification based on value of annual turnover was intended to be the expiry of the financial year and not the date of payment of duty." It is not possible to accept the plea of the respondents that the Assistant Collector had not taken this ground but had rejected their claim only on the ground of unjust

enrichment because, firstly, it is seen from the Assistant Collector's order at para 3 thereof it has been stated, "On scrutiny of the refund claim filed by the assessee it appeared to be partly time-barred...." Secondly, even according to the authorities cited by the respondents to say that it is not open to the statutory authorities to deny refund on grounds of unjust enrichment, it has been emphasised that the authorities are bound by the provisions of Section 11B. And limitation being an integral part of it, then it has to be spelt out. It is this aspect of the Collector (Appeals) order that has been raised in appeal before us. The Department has not contested the Order-in-Appeal on the aspect of unjust enrichment. Therefore, it is only just and proper that the order of the Collector (Appeals) be modified to say that the respondents will be eligible for refund subject to limitation of six months period from the relevant date under Section 11B of Central Excises & Salt Act, 1944 i.e., the date of payment of duty. The appeal is disposed of in the above terms.

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