

Buckau Wolf India Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-12-1991

Reported in : (1994)(69)ELT412Tri(Mum.)bai

Appellant : Buckau Wolf India Ltd.

Respondent : Collector of Central Excise

Judgement :

1. All the three appeals, having the same issue (but facts being different) were argued together by both the sides. Hence, they are proposed to be disposed of by the common order.

2. The three appeals are directed against the orders of the Collector (Appeals) as per details below : 3. In all the aforesaid cases, the Collector (Appeals) has rejected the appellants' appeals against the endorsement made by the Supdt.

requesting them to file separate refund claims in respect of certain alleged excess payments made in RT 12 returns for which they claimed credit in PLA to be authorised by the Supdt. The Collector (Appeals) has held in all the three cases that the Supdt.'s endorsement advising them to file refund claims is perfectly in order and hence rejected their appeals. The present appeals are against the said orders of the Collector (Appeals).

4. While recording the facts, we would deem it proper to bring out the details in each case for proper appreciation of the legal arguments from both the sides. The

common factor is that in all the three cases, the appellants, while submitting RT12 returns, made an endorsement of excess payment and sought for credit of the excess payment in PLA.5. Appeal No. 439/87-BOM : Endorsement made in RT 12 return for August, 1984 reads as "Duty excess paid under GP 1 Nos. 412, 415, 421, 422, 424, 426, 443 and PLA entry No. 508 dtd. 30-8-1984. Refund requested". The forwarding letter to RT 12 return for Aug. 84 (letter dtd. 7-9-1984) is silent on how the excess payment has arisen but seeks for permission for taking credit of Rs. 1,24,690.47 in their PLA. Supdt.

has assessed the RT 12 return on 31-3-1985 and made a remark requesting the appellants to lodge refund claim.

6. Appeal No. 440/87-BOM: They have given the particulars of excess payment of Rs. 3801.22 showing the invoice No. & date, duty paid and duty payable and these details are contained in a letter dated 2-1-1985 addressed to the Supdt. They have requested for credit in RT 12 for the above amount. The Supdt. while assessing RT 12 returns has advised filing a regular refund claim.

7. Appeal No. 441/87-BOM : In the RT 12 return for Oct. 1984, the appellants indicated excess duty paid on GP 1 620 for Rs. 4400/-, Rs. 90/- on GP 1 621 and Rs. 1760/- on GP 1 623, without giving any reasons for the excess. Before Collector (Appeals), they have the particulars that Rs. 4400/- was double payment under G.P. No. 620 and 617 and Rs. 1760/- excess has been paid on G.P. 623 due to revision in the cost of those items.

8. Shri Baxi, the Ld. advocate, sought to emphasise on the following aspects of legal position, for allowing these appeals : (i) Rule 173-I contemplates an enquiry to be done by the proper officer during assessment and hence even if the details as to how excess payments have been made are not furnished, he should cause necessary enquiry to be made and assessment should be done properly and the excess payment should be given credit. The powers of the assessing officer under Rule 173-I do not stop him giving credit only in respect of arithmetical/clerical errors, it extends to even other excess payments; (ii) Section 11B provides for return of any duty paid. There is a saving Clause (4) to Section 11B, wherein it is stated that save as otherwise provided by or under this Act, no claim for refund of

any duty of excise shall be entertained. When there is a provision under Rule 173-I for giving credit in the PLA in respect of excess payment and that is available to the assessee, he need not resort to filing a refund claim under Section 11B as directed by the Supdt.; (iii) The Supdt. having failed to exercise the statutory powers conferred on him, and by giving belated direction to the appellants to file refund claim, knowing well that the refund claim is time barred at the time of making endorsement, would virtually deny the benefit of taking credit in the PLA of the excess payment.

9. For supporting the aforesaid legal propositions, he cited the following decisions of the Tribunal: However, he stated that the West Regional Bench in the case of Ideal Printers Pvt. Ltd. has held the view that short endorsement on RT 12 by the assessee claiming excess payment cannot save the limitation prescribed under Section 11B, unless followed by proper refund claim and Rule 173-I operates as a simple mechanism for rectifying apparent erroneous excess payment or short payment arising on account of arithmetical/clerical errors. However, the same West Regional Bench in its order No. 2175/90 in appeal No. E/382/90-BOM in the case of M/s.

Menon Pistons Ltd. have held that excess payment pointed out by the assessee in the RT 12 returns should be considered and credit allowed under Rule 173-I. However, this case also relates to excess payment on account of arithmetical error.

10. Shri Naik, the Ld. JDR for the respondent, pleaded that in the case of Appeal No. 439/87, the endorsement made on the RT 12 returns by the assessee merely reads that the excess duty has been paid under certain gate passes without even giving any details as to how such excess payments have arisen. From the details subsequently made available before the Collector (Appeals), it is observed that these excess payments have arisen on account of different valuation of the goods covered by various gate passes. This would involve in determination of the correct value in respect of the goods cleared and revision of the assessable value. The assessing officer cannot perform the function of approving or revising the value. It is not a mere arithmetical/clerical mistake. The appellants ought to have filed a

refund claim giving all the details of the correct value to be applied and the reasons for excess payment. In the case of appeal No. 440/87-BOM, though they have given particulars of excess payment of Rs. 3801.22 by means of letter addressed to the Supdt. along with the RT 12 returns, they also relate to excess payment on account of adopting of wrong value on the gate passes. Hence, the revision of assessable value falls beyond the scope of the Supdt. In the case of appeal No. 441/87-BOM, the amount of refund of Rs. 1760/- claimed as excess payment again relates to excess paid on Gate Pass No. 623, due to revision in the cost of the item used in the manufacture, thereby resulting in revision of the assessable value. In this case also, no reasons have been given in the endorsement made on the RT 12 returns. He also contended that the Supreme Court in the case of Kosan Metal Products reported in 1988 (38) E.L.T. 575 have held that short endorsement made on RT 12 returns demanding short levy cannot save the limitation under Section 11A. This view has been accepted in a number of cases by the Tribunal. In this context, he referred to the decision of the Tribunal in the case reported in 1989 (44) E.L.T. 724. He, therefore, pleaded that when there is an independent and self contained section available under Section 11B for claiming refund, the Supdt. is perfectly justified in advising the appellants to take action under the said section, especially, when some of the excess payments relate to revision of assessable value, which is not falling within his purview. He also referred to the Hand Book of Self Removal Procedure and pleaded that only excess payment on account of late receipt of notification or/and excess payment on account of arithmetical/clerical errors should be rectified at the assessment stage by the assessing officer.

11. After hearing both the sides, we find that in this case, the appellants have come up in appeal against the endorsement made by the Supdt. on RT12 returns, advising the appellants to file refund claims before the Asstt. Collector. This endorsement has been made by the Supdt. at the time of completion of assessment memorandum. In the RT 12 return, the appellants have claimed excess payment under certain gate passes. Excepting in one case (A. No. 440/87) in the other two cases, even the details for excess payment and reasons as to how they have occurred are not mentioned anywhere in the RT 12 returns, nor they were sought to be explained by a covering letter to RT 12 return. The Ld.

advocate pleads that even if such details are not given, the Supdt.

ought to make enquiry, which is provided for under Rule 173-I. We, however, cannot agree to this proposition wholly. Because, certain powers are entrusted to certain officers in the hierarchy, the Supdt.

is the proper officer for assessing RT 12 returns and his powers are confined only to make such enquiry as would be necessary for completing the assessment under Rule 173-I. The proper officer for approving the value or for revising the value or for approving the rate of duty/extending or denying the exemption is the Asstt. Collector. A.C. has to approve the classification list or price list, which are required to be submitted by the assessee under Rules 173B and 173C of the Central Excise Rules. Hence, the scope of any enquiry contemplated under Rule 173-I, by the proper officer could not extend to enquiries concerning valuation or classification. The scheme of SRP also contemplates that once classification list and the price list are approved by the Asstt. Collector, the assessee is to determine the duty payable on the basis of the approved classification/price lists. The nature and scope of enquiry, which the assessing officer, viz. Supdt.

can carry out would fall within the restricted sphere - as to whether there had been any excess payment or short payment on account of arithmetical/clerical errors or on account of double payment of duty on the same goods by mistake or removal of goods on GP, without debiting in the PLA or excess debit in PLA. The scope of this enquiry cannot extend to such areas as revision of assessable value or denial of exemption or demanding duty at a higher rate than that approved by the Asstt. Collector and vice-versa allowing assessment at a lower rate than that approved by the Asstt. Collector. In view of this legal position, we are unable to agree with the Ld. Advocate's proposition that because an enquiry is contemplated under Rule 173-I, the assessing officer can make any enquiry covering all aspects for purpose of assessment under Rule 173-I. We, therefore, would support the Supdt.

where he finds, that the nature of the enquiry transcends beyond his purview, he can rightly advise the assessee to file the refund claim.

This is the view, which has been consistently taken by the Tribunal in the various citations made by the Ld. Advocate. Even in the case of Ideal Printers reported in 1990 (49) E.L.T. 559 (Tri.), this Bench has held that Rule 173-I operates as a simple mechanism for rectifying apparent erroneous excess payment or short payment arising on account of arithmetical errors. In the case of Simplex Mills Co. Ltd. excess payment was made on account of the belated receipt of notification, in respect of which the assessee had followed the prescribed procedure laid down in the Trade Notice issued by the Department. In the case of Balaji Fasteners, the issue involved is slightly different; there it was a case of refund claim which was rejected as time-barred. However, an endorsement has been made earlier on the RT 12 pointing out the excess payment. Even in this case, classification list was not approved by the A.C. at the rate indicated in the RT 12 returns and it was later approved by him extending the benefit of the lower rate for the relevant period. In the case before us, no refund claims in respect of the alleged excess payment has been made. Only an endorsement without giving details of excess has been made. On going into the factual details of excess payment, subsequently explained before Collector (Appeals), we find that barring one case all other cases involve in revision of value for purpose of determining the correct duty amount and consequential excess payment. This would necessarily have to be done by the Asstt. Collector. The Asstt. Collector is competent not only to sanction refund but also to go into the question of re-determination of the value. In the case of appeal No. 441/87, we find that the amount of Rs. 4400/- is claimed on account of double payment of duty both under GP 620 as well as GP 617 and the excess payment has arisen on account of cancellation of a gate pass. This item pertaining to Rs. 4400/- in our view, could fall within the purview of the Supdt.'s enquiry for giving credit, because it does not involve in determination of the rate of duty or revision of assessable value. It involves only in finding out whether there is double payment and there is a cancellation of G.P. Hence, while upholding the orders of the authorities below in all other cases, we would deem it proper to direct the Supdt. to go into the question of excess payment on account of double payment of duty under G.P. No. 617 and 620 for the same goods and if the Supdt. finds that the excess payment is on account of double payment and cancellation of G.P. suitable credit may be given in the PLA.12. In the result, Appeal Nos. 439/87 and 440/87

are dismissed. Appeal No. 441/87 is partly allowed in the above terms.

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