Collector of Central Excise Vs. Midi Tools Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-06-1993

Reported in : (1995)(80)ELT586Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Midi Tools Pvt. Ltd.

Judgement :
1. This is an appeal from the Revenue against the Order-in-Appeal No.M/981/B. H-218/85, dated 12-9-1985 allowing the appeal of the respondent.

2. The facts of the case are that the respondents filed a refund claim on 25-3-1983 covering the duty payments made during the period 1-4-1982 to 24-2-1983. The Asstt. Collector sanctioned the amount of Rs. 48,839/- as refund eligible within the period of limitation of 6 months and rejected the balance of the refund claim amounting to Rs. 64,456/- as time-barred, in the absence of duty payment under protest. The Collector (Appeals) however allowed the appeal of the respondents having regard to the Tribunal decision to the effect that in the case of eligibility for exemption under Notification 80/80, they would be knowing the liability only at the end of the financial year and accordingly the relevant date has to be taken at the close of the financial year 1982-83 and hence allowed the appeal of the respondents.

The present appeal is from the Revenue against the aforesaid order.

3. Shri Ravinder Jain, the learned JDR, contends that though the Tribunal has taken a view earlier on the lines adopted by the Collector (Appeals) in two of the decisions of the Tribunal, namely, 1991 (51) E.L.T. 532 in the case of Asian Bearings and 1991 (53) E.L.T. 56 in the case of Rainbow Industries wherein the Tribunal has held that the date of payment of duty is the relevant date under Section 11B and one of the decisions has been given in the context of Exemption Notification 80/80. He pointed out that the Member (J) in the case of another order passed in respect of the Collector's Reference Application against M/s.

Chemical Industries allowed the Reference Application accepting that there is an area of doubt with regard to the reckoning of the relevant date. He also produced a copy of the said order.

4. Shri R.J. Parakh the learned advocate, however pleads that in this case the classification list was filed on 9-8-1982 claiming the benefit of exemption for the period from 1-4-1982 to 24-2-1983 and this list was approved only on 16-3-1983 and following the ratio of the judgment of the Supreme Court in the case of Samrat International reported in AIR 1991 SC 369 the assessment which had been done during the period, when the classification list was yet to be approved, should be treated as provisional and since the classification list has been filed covering the entire period of the financial year, the time bar plea cannot be held against them. He also referred to the judgment of the Bombay High Court in the case of Weikfield Products reported in 1991 (51) E.L.T. 323.

5. After hearing both sides I find that there is no dispute that during the period from 1-4-1982 to 9-8-[1982], the respondents had paid duty on their own without claiming the benefit of exemption under [Notification] No. 80/80. They claimed the benefit of exemption under Notification 80/80 only through a classification list filed on 9-8-1992, though the classification list purports to cover the entire financial year. Hence unless there is a letter of protest covering the duty payment from 1st April 1982 to 9-8-1992, the ratio of the Supreme Court in the case of Samrat International may not be applicable, mainly because of the fact that during the period there was no classification list claiming the benefit of exemption under Notification No. 80/80 before the department, which was pending approval. In the

circumstances the benefit of provisional assessment cannot be given applying the ratio of the Apex Court, if they had not filed a letter of protest for duty payment from 1-4-1982 to 9-8-[1982]. Now the question boils down to the issue as to whether the ratio of the Tribunal decision in the case of Asian Bearings and Rainbow Industries could be applied or the ratio of the other decisions of the Tribunal including the Bombay High Court in favour of the respondent would apply. In this context, I have to observe that the Kerala High Court in a Division Bench appeal have held that the period commences from the date of payment of duty reversing their earlier decision that the limitation will start from the end of the financial year - vide 1983 (14) E.L.T. 2156. However, the Bombay High Court in the case of Weikfield Products reported in 1991 (51) E.L.T. 323 (Bom.) have held that the end of the financial year is the relevant date. In view of the conflicting decisions of the High Court and also the decision of this Tribunal, the matter calls for reference to the Larger Bench and hence I would direct the Registry to place the papers before the President for constituting a Larger Bench so that a final decision on the precise question as to whether in the facts and circumstances of the case, where the benefit of Notification 80/80 is to be extended, the relevant date for the purpose of computing the time limit for claiming refund would be the close of the financial year or the date of payment of duty as laid down under Section 11B.