

**Collector of Central Excise Vs. Multi Metals Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Apr-18-1995

**Reported in :** (1995)LC351Tri(Delhi)

**Appellant :** Collector of Central Excise

**Respondent :** Multi Metals Ltd.

**Judgement :**

1. This is an appeal by Revenue against the order in appeal No.62-CE/JPR/90, dated 24-5-1990 passed by Collector of Central Excise (Appeals), New Delhi whereby he had allowed the appeal filed before him by M/s. Multi Metals Limited, who are respondents herein and set aside the order passed by Assistant Collector, Central Excise, Kota holding that they had been issued no notice for recovery of duty on account of reversal of credit taken in their R.G. 23A Part I account within six months under Section 11A and hence the Assistant Collector was not the competent authority to adjudicate the case. He, therefore, set aside his order and remanded the case for de novo adjudication by the competent authority under Section 11A of Central Excises & Salt Act, 1944, if considered warranted and necessary.

2. In the appeal it has been urged that the impugned order in appeal passed by the Collector (Appeals) is not based on the correct application of the facts of the case and is misconceived. It has been contended that the said order of the Collector (Appeals) is incorrect in law as Rule 57-I providing for recovery of credit wrongly availed of or utilised in any irregular manner, as it existed during the

relevant period did not provide for any limitation period for recovery of wrongly availed modvat credit or modvat credit utilised in an irregular manner. This case is of a period prior to 6-10-1988 when Rule 57-I was amended providing for limitation period of six months or five years, as the case may be. All that was necessary for recovery of the wrongly availed credit was a show cause notice, which, in the present case, had been issued in the form of letter dated 10-11-1987. There is no reference to Section 11A of Central Excises and Salt Act under Rule 57-I of Central Excise Rules, 1944 and therefore, the Collector (Appeals)'s observation that the appellants were issued no notice under Section 11A and therefore, the Assistant Collector was not competent to adjudicate the case is totally incorrect. It has accordingly been pleaded that the impugned order in appeal be set aside and order in original be restored or such order as deemed fit may be passed.

3. Heard Shri Sanjeev Sachdeva, learned Senior Departmental Representative who appeared on behalf of the appellant Collector and Shri R. Sudhinder, learned advocate who appeared for the respondents.

While Shri Sachdeva reiterated the submissions set out in the appeal, Shri Sudhinder supported the impugned order and pleaded that the appeal may be dismissed.

4. We have taken note of the submissions. We have perused the record.

The main thrust in the appeal is that at the material time Rule 57-I did not provide for any time limit for the issue of notice. In the present case, the show cause notice was in the form of letter dated 10-11-1989 and it has accordingly been argued that the finding of the Collector (Appeals) that no notice was issued for recovery of duty within six months under Section 11A and therefore the Assistant Collector was not the competent authority to adjudicate the case is totally incorrect. It is also pointed out that there is no reference to Section 11A in Rule 57-I. We have gone through the letter of Assistant Collector which has been referred to in the appeal and which is claimed to be the show cause notice. The said letter was worded as follows :- F.S./Audit/86/5061, dated 2-9-1986 under which the credit of Rs. 5,82,155 was wrongly allowed to you. The matter has been re-examined and it is held that allowing of the above credit is irregular therefore the abovesaid letter/order may

please be treated as withdrawn. I demand that the amount of Rs. 6,82,155.35 may please be paid back by reversing the entry in the RG 23A Part II register within a week of the receipt of this letter. This may please be treated as most urgent." This letter is not in the nature of a notice. It has been stated herein that the matter has been reconsidered and it is held that allowing of the credit was irregular. The earlier letter granting credit was directed to be treated as withdrawn. The amount in question was demanded and it was directed that it should be paid back by reversing the entry in 23A Part II register within a week of receipt of the letter. The letter is a peremptory demand and not a notice. Even when the unamended Rule 57-I was in force prior to 6-10-1988, there was no escape from the requirement of issue of show cause notice. It was held by the Madhya Pradesh High Court in Steel Ingot (P) Ltd. v. Union of India, 1988 (36) E.L.T. 529 that "the action taken under Rule 57-I would adversely affect the interests of the petitioners. It is true that the said rule does not envisage giving of any show cause notice, but there is nothing in that rule which excludes the applicability of the principles of natural justice. No cogent reason for making a departure from the fundamental rule of natural justice was forthcoming.

The impugned order was, therefore, liable to be quashed on that ground with the directions that the proper officer would after giving reasonable opportunity to the petitioners to show cause pass a speaking order." Similarly, the Madras High Court held in Ennore Steel Enterprises Ltd. v. Union of India, 1990 (47) E.L.T. 363 as follows : "Rule 57-I does not contemplate the issue of a show cause notice and an opportunity to the person likely to be affected by the adverse orders that may be passed under Rule 57-I, it is elementary that insofar as the orders are likely to affect adversely the interests of the petitioners and involve them in other liabilities that before passing orders under Rule 57-I, the third respondent should issue show cause notice to the petitioners stating the circumstances under which the powers of the said rule are to be invoked and an opportunity to the petitioners should be given to [state] their case." In the circumstances, we hold that the Collector (Appeals) was correct in holding that no show cause notice was issued in this case. As this observation is correct, his further observation that the appellants were issued no notice for recovery of duty within six months under Section 11A and therefore, the Assistant Collector was not competent authority to adjudicate

the case and the impugned order passed by him is accordingly not sustainable has no significance. As no notice was at all issued, whether within six months or beyond that period, neither the Asistant Collector nor any other officer say the Collector could have confirmed the demand. We, therefore, uphold the impugned order in appeal and dismiss the appeal.

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