

Worth Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : May-01-1995

Reported in : (1995)(78)ELT481Tri(Chennai)

Appellant : Worth

Respondent : Collector of Central Excise

Judgement :

1. This appeal is against the order of the Collector of Central Excise (Appeals), Trichy, dated 16-12-1993. Under the impugned order, the learned Collector (Appeals) has upheld the order of the learned lower authority holding that the appellants were not entitled to the refund of Rs. 10,846.75 on grounds of unjust enrichment in terms of amended Section 11B of the Central Excise Act and that the amount were to be credited to the Consumer Welfare Fund under Section 12C of the Act. On going through the paper book filed by the appellants, it was found that there had been earlier proceedings and this amount was part of the refund earlier sanctioned and was appropriated for adjustment towards a demand arising at a later point of time.

2. Sh. Bose Crwos, the learned representative of the appellant was asked to explain the position right from the beginning as to how the amount sought to be refunded came to be earlier sanctioned and what happened after the refund was sanctioned. He pleaded that the appellants manufactured goods in the various units by employing the handicapped persons and the goods manufactured by them are exempted tinder Notification No. 92/89, dated 1-3-1989. They had, he

pleaded, paid duty without claiming the benefit of this notification and they sought refund of the amount paid and were sanctioned a refund of Rs. 53,901.07. The authorities, however, he pleaded, refunded in cash only an amount of Rs. 41,035.10 and for no apparent reason held back a balance of Rs. 10,846.75. He pleaded at the time when the Notification No. 92/89 came into force, the appellants had been paying duty on the goods manufactured in their units and were also claiming Modvat credit.

After coming into force of this notification, the appellants were no longer eligible for claiming Modvat credit and on 1-3-1989 some stock of goods were lying with them and in respect of which they had taken Modvat credit. The authorities issued a show cause notice for recovery of the amount taken as Modvat credit in respect of the inputs lying in stock and raised a demand of Rs. 20,767.15. This demand was confirmed by the Asstt. Collector vide his Order No. 24/90, dated 8-3-1990 and while passing the order the learned Asstt. Collector adjusted this amount of Rs. 10,846.75 which was earlier held over out of their sanctioned refund of Rs. 53,901.07 and a balance amount of Rs. 9,920.40 was demanded from them. The appellants thereafter filed an appeal before the learned Collector (Appeals) and this demand in respect of the goods lying in stock was set aside. The appellants, therefore, consequentially became entitled to the refund of the amount adjusted against the demand of Rs. 20,767.15. The appellants, therefore, sought for the refund of this amount of Rs. 10,846.75 which was adjusted towards their demand under the order of the Asstt. Collector dated 8-3-1990. He pleaded that on 8-3-1990, Section 11B which has not been amended for the purpose of unjust enrichment and this amount therefore should have been refunded to the appellants. The learned Asstt.

Collector by his order dated 28-6-1993 while upholding the appellants claim for refund of the amount, has not given the amount holding that the burden of duty had been passed on their customers and therefore in terms of Section 11B(2) the amount could not be paid to them and the same was required to be credited to the Consumer Welfare Fund created by the Government of India u/s 12C of the Act. He pleaded that the learned Collector (Appeals) on appeal filed by them has without traversing the basis on which the refund had been given has upheld the

order of the learned lower authority. He pleaded that the question of unjust enrichment in the background of the facts and circumstances of the case would not arise. In any case, he pleaded that the learned lower authority had not taken into consideration the orders which had been passed in regard to the amount involved before passing such orders.

3. Shri Murugandi, the learned DR pleaded that inasmuch as on the date when the refund was applied for, Section 11B had been amended and the provision of Section 11B(2) had come into force, the learned lower authority had rightly rejected the appellants claim for payment of the amount to them.

4. I have considered the pleas made by both the sides. I observe that the appellants had sought for a refund of Rs. 53,901.07 as they had paid duty during the period when they were entitled to the benefit of Notification No. 92/89. Out of this amount, the appellants had been refunded the amount of Rs. 41,035.10 in cash on 16-8-1989 and an amount of Rs. 10,846.75 was withheld. There is no explanation in the records for withholding this amount. Be that as it may, this amount however was adjusted towards payment of duty demanded from the appellants by the Asstt. Collector by his order dated 8-3-1990. So far as therefore the original amount of Rs. 53,901.07, the full credit of this amount can be taken to have been given to the appellants partly by way of refund in cash amounting to Rs. 41,035.10 and partly by adjustment of the balance which was held over under the order of the Asstt. Collector dated 8-3-1990. So far as the event of refund relating to refund of the amount of Rs. 53,901.07 is concerned, the same can be taken to have been concluded by this order of the Asstt. Collector and this amount of Rs. 10,846.75, therefore, cannot be taken to be relatable to the refund arising on account of payment of duty when the goods were exempted under the aforesaid notification. The refund claimed by the appellants which is the subject matter of appeal before the Tribunal is relatable to the event of payment in respect of which the Asstt. Collector passed an order dated 8-3-1990. This order was appealed against by the appellants and the learned Collector (Appeals) by his order dated 16-7-1991 held in favour of the appellants and set aside the demand made against the appellants. Against this demand, a payment can be taken said to have been made by adjustment of the balance of Rs. 10,846.75, while another amount of Rs.

9,920.40 was still pending recovery in terms of the Asstt. Collector's order. By the learned Collector (Appeals) order, the amount of Rs. 10,846.75 which was adjusted was therefore required to be refunded. This demand, as seen, was in respect of the credit which had been utilised by the appellants.

It is seen that this credit is the amount of credit which had been utilised by the appellants in respect of the inputs which were lying in stock on the date when the goods manufactured by them came to be exempted. Therefore, the question of unjust enrichment will have to be examined with reference to the event of this recovery that is the recovery in respect of the inputs lying in stock. It is observed that the learned lower authorities have dealt with the issue in the context of the goods which were cleared free of duty and not in the context of the inputs lying in stock. The learned lower authorities should have taken note of the earlier orders of refund, the order of the Asstt.

Collector in regard to adjustment of duty and the earlier order of the learned Collector (Appeals) setting aside the order of demand and then gone into the question of unjust enrichment. This having been not done, I hold that the learned lower appellate authority's order cannot be said to be a proper order and has to be set aside. In view of the above, the order of the learned lower appellate authority is set aside and the matter remanded for adjudication afresh to the learned lower appellate authority in the light of the above observations after affording the appellants a reasonable opportunity of being heard.

Appeal is thus allowed by remand.

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