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Collector of Central Excise Vs. Mahajan Iron Foundry

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-30-1995

Reported in : (1996)(81)ELT614TriDel

Appellant : Collector of Central Excise

Respondent : Mahajan Iron Foundry

Judgement :

1. This revenue appeal is directed against the order-in-appeal No.120-CE/KNP/85, dated 19-2-1985 of Collector (Appeals) wherein Collector has set aside the order of the Assistant Collector confirming the duty demand of Rs. 7237.24 erroneously refunded to the Respondents.

2. Arguing for the appellants, the Ld. D.R. submitted that the Assistant Collector had sanctioned Rs. 13,752.22 for the period from 8-3-1975 to 10-5-1975 and the amount was paid to the Respondent on 2-9-1978. He further submits that out of this Rs. 7,237.24 had been paid erroneously to them. This amount pertains to the period from 3/75 to 10-5-1975 and was barred by limitation.

3. The Learned Advocate submitted that at the relevant time before the amendment to Rule 11 time limit for making claim was one year and in regard to merits in this case they had been writing letter after letter to the department that the iron castings manufactured by them are not subject to duty. In the letter dated 8-7-1975 they had submitted that Indian Foundry Association, Calcutta had been informed by the Collector, Calcutta, that the C.I. Casting in crude form would not

attract any duty. In this letter dated 8th July, 1975 they had stated that they had already incurred heavy financial loss and they should be exempted from paying excise duty on C.I. Casting. Though a letter dated 16-1-1976 the Superintendent of Central Excise, Agra wrote to them that the matter was under examination but in case it was decided they are exempted, the earlier amount of duty paid by them is liable to be refunded. Collector (Appeals) holding that it was on record that they had raised the matter earlier at different levels with the Department and had filed refund claim within a month of being informed by the Superintendent of Central Excise that the duty was not leviable, allowed the appeal.

4. Considered. I find from the record that they had claimed, on more than one occasion, that they were required to pay duty. It is also clear that it was the inability to confirm the correct decision in time that they were forced to pay the duty and in fact the Central Excise Officer had assured them in writing that the duty would be refunded.

There was no prescribed form of refund application at the material time. Payment was clearly made under protest. In view of this, I do not see any merit in the Revenue appeal. The Revenue appeal is rejected and impugned order of Collector is upheld.

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