

Collector of Central Ex. Vs. Kumar Auto Cast Limited

Collector of Central Ex. Vs. Kumar Auto Cast Limited

SooperKanoon Citation : sooperkanoon.com/8871

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-06-1995

Reported in : (1996)(82)ELT137TriDel

Appellant : Collector of Central Ex.

Respondent : Kumar Auto Cast Limited

Judgement :

1. Collector of Central Excise, Chandigarh has filed this appeal against the Order-in-Appeal dated 17-9-1995 in terms of which she had set aside the order of Assistant Collector of Central Excise, Ludhiana rejecting the refund claim filed by M/s. Kumar Auto Cast Limited who are respondents in the present proceedings. The Assistant Collector had rejected the refund claim on the ground that the amount in question had been voluntarily debited by them in their PLA towards duty on account of disallowance of Modvat Credit. The respondents herein had originally cleared one of their final products namely, MCI inserts on payment of duty by debit to their RG-23A Part II Account. It was held by the Assistant Collector that such payment of duty by utilising their Modvat Credit balance in their RG-23A Part II Account was not permissible as they had not declared the aforesaid product as one of their final products in their declaration filed under Rule 57G of Central Excise Rules. In response to the demand issued by the Department the respondents had debited the amount from their PLA. Thereafter they had filed a refund claim contending that the notice of demand issued by the department for disallowing of Modvat Credit was barred by limitation.

The Assistant Collector had rejected their refund claim holding that the amount of credit of duty utilised wrongly was correctly recoverable and their contention that they are entitled for the refund of the amount paid by them under mistake of law was untenable. The Collector of Central Excise (Appeals), however, set aside the order of the Assistant Collector on the ground that the demand should have been issued in time and not beyond a period of six months. It was held by her that there was no suppression of facts on the part of the appellants before her.

2. In the present appeal against the order-in-appeal, it has been urged that the Collector (Appeals) had erred in holding that the application of the extended period for the demand was not proper. It was open to the respondents to file an appeal before the appellate authority if they felt aggrieved with the letter of the department demanding debit of duty. They had also not debited the amount in their PLA under protest. Their subsequent contention that the duty had been paid by them under mistake was not tenable. It has also been contended in the appeal that as the amount debited is for the credit wrongly availed/utilised, the refund would amount to undue enrichment which is barred under Section 11B of the Central Excises and Salt Act. It has, therefore, been pleaded that order of the Assistant Collector should be restored by setting aside the order-in-appeal.

3. When the appeal was called the appellant is represented by Shri Y.R.Kilania, JDR. The respondents are not present. I find that the notice had been issued to them by telegram on 1-11-1995. As there is no response from them I proceed to hear the learned Departmental Representative and dispose of the appeal on merits.

4. Shri Kilania supported the grounds urged in the appeal and pleaded that the same may be allowed.

5. I have considered the submission made by the learned Departmental Representative. I have carefully gone through the appeal and the connected record. I agree with the contention raised in the appeal that it is not open to the respondents herein to have contended that the refund claim filed by them should have been allowed as the demand of duty issued by the Department was barred by limitation. No doubt the demand in question was issued beyond a period of six

months from the time of availment of Modvat Credit. Nevertheless they had submitted to the demand of duty and debited their PLA. They could have represented against the demand raising the point that the same was barred by limitation as there was no suppression or wilful statement on their part. They had availed Modvat Credit for payment of duty on an undeclared final product by debiting the Modvat Credit amount. Such availment of credit for a non-entitled final product was apparent from their record and there is no question of any suppression. To that extent the finding that the demand was time barred is technically correct but once that time barred demand had been accepted by them and they had paid the duty, the question of time barred nature of the demand loses its relevance. The relevant claim which they had filed had been correctly rejected by the Assistant Collector as the admissibility of the refund claim would be dependent on the question whether they were entitled to pay duty at the material time on the final production in question by debit to their Modvat Credit account namely, RG-23A Part II account. Admittedly they were not eligible as they had not declared the said final product in their declaration. They included the said final product in their declaration only subsequently. In the circumstances, the appeal filed by the Collector against the order-in-appeal deserves to be allowed. I order accordingly and set aside the order-in-appeal and restore the order-in-original passed by the Assistant Collector of Central Excise, Ludhiana.

6. The aforesaid decision would not, however, close the door as far as the respondents are concerned. They had no doubt wrongly availed of the Modvat Credit for payment of duty on MCI inserts by debiting their RG-23A Part II account. Once they had made good such wrong utilisation of Modvat Credit by payment of duty from their PLA, the RG-23A account which was debited earlier had to be restored. They are entitled for such crediting of the amount in question to their RG-23A Part II account if not already taken by them at the time of payment of duty of equivalent amount in the PLA. This amount would be available to them for utilisation for payment of duty as admissible under the relevant Modvat Rules particularly Rules 57A, 57F and 57G of Central Excise Rules. The point raised by the Collector in the appeal about undue enrichment is not, however, accepted as the amended Section 11B of Central Excises and Salt Act carves out an exception in the matter of credit of the refund amount to the specified fund if such refund

pertains to credit of duty availed under a Rule or a Notification. In fact no refund as such has been held to be admissible to the respondents and as such there is no occasion to press into service the provision of Sub-section (2) of Section 11B.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com