J.B. Advani Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-19-1996

Reported in : (1996)(88)ELT701Tri(Mum.)bai

Appellant : J.B. Advani

Respondent : Collector of Central Excise

Judgement :

1. The appeal is directed against the Order-in-Original No. 3/CEX/93 of the Collector, Central Excise, Aurangabad.

2. The appellants vide entry in their RG 23A, Part II availed of Modvat credit on 28-7-1987 for the duty paid on the goods originally cleared by them on payment of duty on 23-4-1987 and sent to Eskayef Ltd. but which was returned as rejects under cover of challan and supported by Certificate issued by the Range Superintendent. During the audit, an objection was raised that the rejects could not be considered inputs and were not covered under the declaration filed and hence, show cause-cum-Demand Notice dated 1-8-1988 was issued by the Supdt. of Central Excise raising demand for Rs. 12,750/-. The Appellants contested the same and on passing the Order-in-original, dated 17-9-1988, they preferred an appeal before the Collector (Appeals) who vide order dated 6-5-1990 set aside the said order holding that because the demand raised was beyond the normal period of limitation, and hence, issue of Show Cause Notice by the Superintendent and adjudication by the Asst. Collector were both without jurisdiction.

Direction was given to place the papers before the Jurisdictional Collector. Pursuant thereto, Show Cause Notice dated 28-6-1991 was issued by invoking extended period and adjudication proceedings were conducted by the Collector, who passed the impugned order and confirmed the demand.

3. Mr. M.S. Jadhav, the ld. Advocate for the Appellants has submitted that for the purpose of this appeal, he is pressing the issue of time-bar only. In his submission, the rejected goods were received back in July 1987, under the cover of Certificate dated 24-7-1987 issued by the concerned Jurisdictional Superintendent and based on the same they made entry in RG 23A, Parts I and Part II specifically mentioning that the said entry was in relation to the said Certificate and when they filed their monthly RT 12 return for July, 1987 on 2-8-1987, they enclosed the extracts of RG 23A, Part I and Part II as also the Certificate issued by the Range Superintendent and on due scrutiny of the said RT 12 returns the same was finally approved on 9-12-1987. In his submission, therefore, there is no suppression on their part and even the show Cause Notice initially issued was beyond six months and even at that time there was no cause for invoking the extended period and for the subsequent Show Cause Notice, the department was fully aware since 1988 and suppression could not have been alleged.

4. Mr. K.M. Mondal, the ld. SDR has submitted that there is nothing in the RT 12 returns to ex-facie indicate that the credit taken is in relation to the rejected goods taken as the inputs and even in RG 23A, Parts I and II a casual reference to the certificate from the Range Superintendent is made without specifying that the same was for the goods rejected. In his submission, there was thus a clear design to misguide the authority. The ld. SDR has pleaded that it was required of the Appellants to clearly mention about credit having been taken on the rejected material. Referring to the provisions of Rule 57-1 of the Rules, the ld. SDR has pleaded that the act of the Appellants would tantamount to mis-statement because the entry made is ambiguous. In his submission the subsequent notice has to be taken as issued in continuation of the earlier one issued on 1-8-1988 and for computing the period, the said date would be the relevant date.

5. Considering the submission, when the order is not challenged on the other grounds, though raised in appeal, the merits of the order, other than the one in relation to the time bar aspect, has not been examined.

6. The record produced shows that the appellant has filed RT 12 returns for July, 1987 on 2-8-1987 and as per the requirement, had produced the extracts from RG 23A, Parts I and II. The RT 12 return has been checked and finally approved on 9-12-1987. In the RG 23A, Parts I and II, while pasting the entry, there is a clear reference to the Certificate dated 24-7-1987 issued by the Range Superintendent, Bangalore and as is reported and not effectively rebutted, the Certificate issued by the Range Superintendent was also produced. In the said Certificate dated 24-7-1987, there is a clear mention that the same related to the goods rejected by the customers. Thus, the Appellants had produced all the necessary material in relation to availment of Credit.

7. RT 12 return is required to be filed vide Rule 173G of the Rules, which requires the assessee to file several documents and filing of all these documents are principally with an intention to enable the scrutinising authority to ascertain whether the assessee has somewhere erred either deliberately or otherwise, which may have resulted in non-payment of appropriate duty. Thus all the documents attached to the RT 12 returns are meant to be scrutinised and the officers approving the same are expected to do so and if they fail to do so, it may not be taken as an excuse and then invoke the extended period to raise the demand.

8. Rule 57-1 of the Rules provides for invoking extended period, if there is any mis-statement, collusion or suppression. There is no allegation of any collusion, the appellants, having produced the documents, could not be alleged to have suppressed the fact. For mis-statement, there should be some overt act committed by the Assessee. The dictum suggestio falsi should stand attracted. There is no such suggestion alleged to have been made which has misled the department.

9. The Appellants have taken credit on 28-7-1987 and have declared the same in their RT 12 returns filed on 2-8-1987 and the said RT 12 return is duly approved on 9-12-1987 and thus even the first Show Cause Notice dated 1-8-1988 is

beyond the period of six months computing from any of the aforementioned date. With this being the position, there does not appear any reason to examine whether second notice dated 28-6-1991 should be taken as the valid one, so far as it relates the limitation aspect, when invoking of extended period itself is held as not available.

10. The demand is thus hit by the bar of limitation and hence, cannot be sustained. The order confirming the demand is, therefore, set aside.