

Collector of Central Excise Vs. Tubes and Bars

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-27-1996

Reported in : (1997)(90)ELT64TriDel

Appellant : Collector of Central Excise

Respondent : Tubes and Bars

Judgement :

1. The respondents, M/s. Tubes & Bars are engaged in the manufacture of Aluminium wires falling under the then sub-heading 76.04 during 10-6-1988 to 17-9-1988 and availed Modvat credit in respect of inputs used in the manufacture of the same. The Modvat credit has been denied by the Assistant Collector on the ground that the respondents have not filed declaration of aluminium wires as final product under Rule 57G and, therefore, the respondents were not entitled to the said Modvat credit. Aggrieved by the order passed by the Assistant Collector, the assessee filed an appeal before the Collector of Central Excise (Appeals), who upheld the view taken by the Assistant Collector in rejecting the claim. Further, the assessee preferred an appeal before the Tribunal against the order-in-appeal dated 18/25-7-1991 passed by the Collector (Appeals), Central Excise, New Delhi. The Tribunal observed that there was no allegation of facts. At the relevant time, there was no mention of time limit under Rule 57-I and in the absence of specified period under Rule 57-I for raising the demand, and also in the absence of allegation of suppression, mis-representation, collusion or fraud, the Department was not justified in invoking the larger period.

2. In view of the conflicting views of two High Courts, Tribunal is of the view that this matter is required to be referred to the Hon'ble Supreme Court of India. Accordingly in terms of Section 35H of Central Excises and Salt Act, 1944 the following question of law is referred to the Hon'ble Supreme Court of India: "Whether Rule 57-I of the Central Excise Rules as it stood prior to amendment effected on 6-10-1988, is subject to the provisions of limitation prescribed under Section 11A of the Central Excises and Salt Act, 1944.

Whether Rule 57A is independent of Section 11A of aforesaid and could be invoked for recovery of Modvat credit even covering the period beyond six months from the date of credit before 6-10-1988."

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