(2002) 03 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

Assistant Commissioner, Central Excise APPELLANT

Vs

RAJESH BHATTI RESPONDENT

Date of Decision : 20-03-2002

Acts Referred:

Citation : 2002 2 CPC 451 : 2002 2 CPR 126 : 2002 3 CLT 267 : 2002 3 CPJ 30

Hon'ble Judges : D.P.Wadhwa , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Revision Petition disposed of

Judgement

1. PETITIONER - Assistant Commissioner of Central Excise is a Central Excise Officer under the Central Excise Act, 1944. Duties and powers of a Central Excise Officer for levy, collection and refund of Central Excise Duty, are prescribed under the Central Excise Act, 1944. Section 11B of this Act provides for claim of refund of excise duty. This section, in relevant part, is as under : "11B. Claim for refund of duty-(1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence including the documents referred to in Section 12A as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from or paid by him and the incidence of such duty had not been passed on by him to any other person : provided that..... (2) .... (3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal of any Court in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in Sub-section (2)."

"Relevant date" has also been explained in Section 12A : "12A. Price of goods to indicate the amount of duty paid thereon- Notwithstanding anything contained in this Act or any other law for the time being in force, every person who is liable to pay duty of excise on any goods shall, at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold."

2. SECTION 5A of the Central Excise Act empowers the Central Government to grant exemption from duty of excise on such conditions as may be specified in the notifi-cation granting such exemption. SECTION 5A is as under : "5A. Power to grant exemption from duty of excise-(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon : Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured- (i) in a free trade zone and brought to any other place in India; or (ii) by a hundred per cent export-oriented undertaking and allowed to be sold in India. Explanation : in this proviso "free trade zone" and "hundred per cent export-oriented undertaking" shall have the same meaning as in Explanation 2 to Sub-section (1) of SECTION 3." .... Period of ''one year'' and "from the relevant date" earlier were respectively "six months" and "from the date of payment".

It will be useful to quote SECTION 11B as it existed as on 31.1.1990 : "11B. Claim for refund of duty.-(1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months from the date of payment of duty : Provided that the limitation of six months shall not apply where any duty has been paid under protest. Explanation : Where any duty of excise is paid provisionally under this Act or the rules made thereunder, the period of six months shall be computed from the date of adjustment of duty after the final assessment thereof. (2) If on receipt of any such application the Assistant Collector of Central Excise is satisfied that the whole or any part of the duty of excise paid by the applicant should be refunded to him, he may make an order accordingly. (3) Where as a result of any order passed in appeal or revision under this Act refund of any duty of excise becomes due to any person, the Assistant Collector of Central Excise may refund the amount to such person without his having to make any claim in that behalf. (4) Save as otherwise provided by or under this Act, no claim for refund of any duty of excise shall be entertained. (5) Notwithstanding anything contained in any other law, the provisions of this section shall also apply to a claim for refund of any amount collected as duty of excise made on the ground that the goods in respect of which such amount was collected were not excisable or were entitled to exemption from duty and no Court shall have any jurisdiction in respect of such claim. Explanation : For the purposes of this section "refund" includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of good which are exported out of India."

It will be thus seen that Central Government may grant exemption from duty of excise either absolutely or subject to such condition as may be specified in the notification granting such exemption. In the exercise of this power Central Government issued a Notification No. 64/93-CE dated 28.2.1993 under heading 87.03 of the Central Excise Tariff Act, 1985 relating to Motor Cars, Station Wagons, etc. We may quote this notification as under : "64/93-CE, dated 28.2.1993 : In exercise of the powers conferred by Sub-section (1) of Section 5A of the Central Excise and Salt Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do... exempts all goods falling under heading No. 87.03 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from so much of the duty of excise levied thereon which is specified in the said Schedule as is in excess of the amount calculated at the rate of 40 per cent ad valorem. Provided that in a case where a saloon car after clearance has been registered for ...as taxi, the manufacturer of the said saloon car shall be entitled to a further exemption of duty of 7 percentage points subject to the following conditions : (a) the manufacturer at the time of clearance of such saloon car has paid excise duty calculated at the rate of 40 per cent ad valorem; (b) the manufacturer furnishes to the Assistant Collector of Central Excise a certificate from an officer authorised by the concerned State Transport Authority in this behalf to the effect that such saloon car has been registered for use solely as a taxi, within three months of the date of clearance of the said saloon car from the factory of manufacture or such extended period as the said Assistant Collector may allow; (c) the manufacturer had not collected from the person in whose name such saloon car has been registered as a taxi, or in a case had collected and has refunded to such person, the amount equivalent of such further exemption of duty; and (d) the manufacturer files a claim for refund of duty in terms of Section 11B of Central Excises and Salt Act, 1944 (1 of 1944)."

There is no dispute that when a motor vehicle is registered as a taxi there would be exemption from payment of duty of excise to a certain extent. The Central Excise Act, 1944 is a complete Code. An application for refund of excise duty under Section 11B has to be made within the prescribed period. It is the Central Excise Officer mentioned in that section who is solely authorised to decide the claim for refund. No other Court or Tribunal or Authority is empowered to go into the question of refund of the excise duty. The application for refund of the excise duty can be made only by the person from whom it has been collected. In fact, it would be the manufacturer who would have to pay the duty of excise in the first instance at the time of clearance of the goods. It will be, therefore, he who would have to apply for refund of the duty of excise under Section 11B of Central Excise Act, 1944 with such details and documents as may be prescribed.

3. GRIEVANCE of the petitioner, a Central Excise Officer, in the present case is that direction issued by the District Forum requiring him to refund the duty of excise as per the exemption notification to the complainant who got his vehicle

registered as taxi was not legal petitioner has raised this question notwithstanding the fact that duty of excise as per direction of the District Forum and as affirmed by the State Commission has been refunded to the complainant. Complainant who is now first respondent before us purchased a Maruti Omni vehicle from Modern Automobiles, the authorised dealer of Maruti Udyog Ltd., the manufacturer of the vehicle. Complainant got his vehicle registered as taxi. He submitted all the required papers for getting exemption of the duty of excise to Modern Automobiles who in turn forwarded the documents to Maruti Udyog Ltd. Complainant had filed the complaint originally against the authorised dealer and the manufacturer. But when he came to know that refund was to be ordered by the Assistant Commissioner of Central Excise, the petitioner was also impleaded as the respondent. Since the petitioner did not respond to the notice issued by the District Forum, he was proceeded ex-parte. District Forum has directed the petitioner to make necessary refund to the complainant along with 12% interest per annum from the date of complaint till payment. Cost of Rs. 1,000/- was also imposed on the petitioner. Complaint was filed on 1.2.1996 and petitioner was impleaded as respondent on 23.10.1997 more than two years of the cause of action, vehicle having been purchased on 7.2.1994.

4. AGGRIEVED by the order of the District Forum, petitioner went in appeal before the State Commission. It was the case of the dealer and the manufacturer that the papers seeking exemption of refund of excise duty submitted by the complainant were forwarded to the petitioner who rejected the same on ''frivolous grounds''. It is also submitted that as soon as vehicle is sold out to the distributor duty of excise is paid immediately. Appeal of the petitioner was dismissed by the State Commission. It was, however, noticed that the order of the District Forum had since been complied to the extent that an amount of Rs. 6,984/- being the excise duty to be refunded to the complainant under the exemption notification had been paid but the interest and cost had not been paid so far. State Commission was of the view that no interference was called for in the order of the District Forum and it affirmed the order of payment of interest and cost as given by the District Forum. This petition has to be allowed. District Forum had no jurisdiction first to implead the petitioner after expiry of period of limitation without having given him the opportunity of being heard and second under Section 11B of the Central Excise Act where it was a complete bar on the District Forum to assume jurisdiction in the matter of refund of duty of excise. Even if the order of the petitioner rejecting the application seeking refund of the duty of excise was allegedly on ''frivolous grounds'' this order under Section 35 of the Central Excise Act, 1944 was appealable and the appeal had to be filed by the Maruti Udyog Ltd., the manufacturer, who was the only person entitled to seek refund and to pay the same to the complainant. Admittedly, Maruti Udyog Ltd. did not file any appeal rather took the specious plea before the State Commission that the petitioner in the exercise of his power under Section 11B of the Act rejected the claim on frivolous grounds. There was thus deficiency in service on the part of the Maruti Udyog Ltd., the manufacturer. We would,

therefore, allow this petition and would set aside the orders of the District Forum as well as that of the State Commission and would dismiss the complaint qua the petitioner. Since the amount of duty of excise as permissible under the exemption notification aforesaid has been paid to the complainant we would leave the matter at that.

5. SINCE we have held that there is deficiency on the part of the Maruti Udyog Ltd. the interest as ordered by the District Forum on the amount of Rs. 6,984/- and cost shall be payable by the Maruti Udyog Ltd. to the complainant-the 1st respondent. Petitioner shall, however, also be entitled to the cost of this petition which we assess at Rs. 2,000/- payable by the Maruti Udyog Ltd. Revision Petition disposed of.

