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(1994) 02 MAD CK 0052

In the Madras High Court

Case No : Writ Petition No. 579 of 1988

Buckau Wolf India Ltd. APPELLANT

Vs

Assistant Collector of C.Ex., Madras-VII RESPONDENT

Date of Decision : 01-02-1994

Acts Referred:

Central Excise Rules, 1944 — Rule 12
Central Excises and Salt Act, 1944 — Section 11B

Citation : (1994) 71 ELT 661

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : Mr. U.N.R. Rao, for the Appellant; Mr. K. Jayachandran, for the Respondent

Judgement

1. The petitioner had exported 16 packages of sugar mill machinery to Bangladesh through Radhikapur Land Customs. It is stated that the goods crossed the customs border on 1-5-1981, 16-5-1981, 27-5-1981 and 8-11-1981. By way of incentive the exporter is entitled to claim certain rebate. The petitioner filed an application for payment of rebate which was received by the office of the first respondent on 20-7-1982. The application was rejected as barred by limitation by invoking Section 11B of the Central Excises & Salt Act. An appeal was also dismissed on 27-10-1983 and the revision to the Government was dismissed on 22-9-1986. It is not disputed that all the authorities have held that the claim for refund or payment of rebate was barred by limitation with reference to Section 11B of the Act. It is also not disputed that the authorities had taken note of Rule 12 of the Central Excise Rules and have held that the same will not enable the authority to dispense with the period of limitation.

2. In seeking to set aside the said orders, Mr. U. N. R. Rao for the petitioner says that the first respondent had no jurisdiction to pass orders because the Rule only enables the Collector to pass orders. Secondly, it is argued that the authorities have not properly appreciated the scope of the proviso to Rule 12 of the Rules.

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So far as the first point is concerned it is no doubt true that the Rule refers only to the Collector of Central Excise as the authority to exercise the power of granting rebate. Put on this account no useful purpose will be served by remitting the matter back to the Collector because as against the order of the Assistant Collector, an appeal was preferred to the Collector and the Collector has also passed a detailed order. Secondly, the application was made to the Assistant Collector and therefore, he had passed the order. If on merits there is an arguable case I would have given a chance and remitted back the matter to the Collector. But for the reasons indicated below I do not find any merit in the case of the petitioner and therefore there is no useful purpose in remitting the matter back to the Collector.

3. The substantial argument advanced on behalf of the petitioner is that the proviso does give a power to the Collector to give relief even if any of the conditions laid down in the notification issued under the Rule 12 had not been complied with. The argument proceeds that the notification issued under Rule 12 contains the following clause as Clause V. It is as follows :-

"the goods are exported within (six months) from the date on which the goods were first cleared for export from the producing factory or the warehouse or such extended period as the Collector may, in any particular case, allow, and the claim of rebate, together with the proof of due exportation is lodged with the Assistant Collector of Central Excise before the expiry of the period specified in Section 11B of the Central Excises and Salt Act, 1944 (1 of 1944)."

Therefore, so long as the export is not disputed the Collector could have exercised a discretion to waive the said Clause V and granted rebate. But the argument on the side of the respondents is that the Collector has no power to dispense with the limitation prescribed u/s 11B of the Act.

3A. I have given my careful consideration to the arguments advanced on behalf of the petitioner and I am unable to accept the argument. This is because the proviso enables the Collector to waive any of the conditions laid down in the notification. But the period of limitation is not one of the conditions laid down in the notification. On the other hand the period of limitation is prescribed by Section 11B of the Act. Clause V only says that the claim for rebate should be lodged with the Assistant Collector, before the expiry of the period specified in Section 11B of the Act. In other words, Clause V does not fix any period of limitation. Clause V only refers to the period of limitation u/s 11B of the Act. The Collector has not been given any power to dispense with the period of limitation prescribed u/s 11B of the Act.

4. The issue is not res integra. The following judgments support the plea of the respondents :-

(1) Collector of Central Excise, Chandigarh Vs. Doaba Co-operative Sugar Mills Ltd., Jalandhar, ;

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(2) 1991 (55) ELT 220;

(3) Kannabiran Mill Ltd. v. Collector of Customs - 1993 66 E.L.T. 136, and

(4) Leukoplast (India) Ltd. Vs. Union of India and others, .

5. The impugned orders are therefore, perfectly legal and justified and they are accordingly upheld. The writ petition is dismissed. However, there will be no order as to costs.

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