(2014) 08 AHC CK 0256

In the Allahabad High Court

Case No : Central Excise Appeal No. 9 of 2007

Commissioner of Customs and Central Excise — APPELLANT

Vs

Samtel Color Ltd. — RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11B, 11B(2), 11BB, 12A, 35G

Citation : (2014) 8 ADJ 594 : (2014) 307 ELT 833 : (2014) 29 GSTR 373

Hon'ble Judges : Tarun Agarwala, J;Dr. Satish Chandra, J

Bench : Division Bench

Advocate : B.K. Singh Raghuvanshi, Counsel, Advocate for the Appellant; Nishant Mishra, Counsel, Advocate for the Respondent

Judgement

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Tarun Agarwala, J.—The respondents are manufacturers of colour picture tubes falling under Heading No. 40.11 of the Central Excise Tariff Act, 1985. Some of the picture tubes were found to be defective at the customer''s end and, accordingly were returned to the manufacturer for reconditioning/reprocessing under Rule 173L of the Central Excise Rules, 1944. The respondents, accordingly, filed a declaration in Form-D3 with regard to the receipt of the defective colour picture tubes and after reprocessing/reconditioning, the respondents cleared the reprocessed goods upon payment of duty and, subsequently, claimed refund of duty paid under Section 173L of the Central Excise Rules, 1944. The Deputy Commissioner issued a show cause notice directing the respondent to show cause as to why their claim for refund should not be rejected. After considering the reply, the adjudicating authority passed an order rejecting the claim. The respondent, being aggrieved, filed an appeal before the Commissioner, Appeal, Central Excise, who by its order allowed the appeal and set aside the order of the adjudicating authority. On the basis of the appellate order, the respondent filed an application for refund. The adjudicating authority vide order dated 15th January, 2004 allowed the refund and permitted the respondent to take the credit but reduced the amount by Rs. 27,003/- on the ground that the refund claimed was filed after a period of more than one year and, therefore, not entitled for refund as contemplated under Rule 173L(1) of the Rules of 1944. The respondent, being aggrieved, filed an appeal, which was rejected and, being aggrieved, the respondent filed a second appeal before the Customs, Excise and Service Tax Appellate Tribunal, who set aside the order of the adjudicating authority as well as the appellate order and allowed the appeal with consequential relief. The department, being aggrieved, has filed the present appeal under Section 35G of the Central Excise Act, 1944, which has been admitted on the following questions of law:--

"(i) Whether the provisions as laid down under sub-rule (1)(i) or Rule 173L may be ignored for granting refund of duty on goods received in the factory for re-making, re-processing etc. even after the expiry of stipulated period?

(ii) Whether the interest to the respondent be paid under Section 11BB of Central Excise Act, 1944, where the refund claim has been filed on 13-11-2004 and was sanctioned on 15-1-2004 i.e. well within three months from the date of filing the claim."

2. We have heard Sri B.K. Singh Raghuvanshi, the learned counsel for the appellant and Sri Nishant Mishra, the learned counsel for the respondent.

3. The learned counsel for the appellant submitted that the refund of duty in respect of 58 colour picture tubes is not payable as the same was not received within the stipulated period as per sub-rule (1)(i) of Rule 173L of the Central Excise Rules, 1944 and, consequently, the refund of Rs. 27,003/- was rightly withheld. The learned counsel further submitted that interest on the refund amount was only payable pursuant to the order of the appellate authority and that interest was not payable from the date when the application for refund was filed. The learned counsel submitted that interest in terms of Section 11BB of the Central Excise Act was not payable to the respondents.

4. Having heard the learned counsel for the parties, we find that the adjudicating authority committed a manifest error in reducing the amount of Rs. 27003/- in respect of refund of duty with regard to 58 colour picture tubes under Rule 173L(1)(i) of the Rules. The reasons is not far to see. The matter had been decided by the appellate authority in the first round of litigation wherein the appellate authority held that the respondent was entitled for refund along with interest. In the second round of litigation only the amount of refund along with interest was to be calculated. It was not open to the adjudicating authority to reassess or requantify the amount of duty that was to be refunded. The appellate order dated 22nd October, 2003 had become final inter se between the parties and it was not open to the adjudicating authority to digress from that order and pass a fresh order holding that duty cannot be refunded under Rule 173-L(1)(i) of the Rules.

5. With regard to payment of interest, it would be appropriate to refer to Section

11B and 11BB of the Act. For facility, the said provision is extracted hereunder:--

"11B. Claim for refund of duty. - (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest if any, paid on 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 and interest, if any, paid on such duty in relation to which such refund is claimed was collected from or paid by him and the incidence of such duty and interest if any, paid on such duty had not been passed on by him to any other person:

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act:

Provided further that the limitation of one year shall not apply where any duty has been paid under protest.

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty of excise and interest, if any, paid on such duty of excise as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant''s current account maintained with the Commissioner of Central Excise;

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under--this Act;

(d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(f) the duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify:

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government, the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(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).

(4)..

(5)..

Section 11BB, the pivotal provision, reads thus:

"11BB. Interest on delayed refunds. -

If any duty ordered to be refunded under sub-section (2) of Section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

Provided that where any duty ordered to be refunded under subsection (2) of Section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation : Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of the Assistant Commissioner of Central Excise, under sub-section (2) of Section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the Court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."

6. From the aforesaid provision, it is apparently clear that Section 11BB of the Act comes into play only after an order for refund has been made under Section

11B of the Act. Section 11BB of the Act provides that in case any duty paid is found to be refundable and if duty is not refunded within a period of three months from the date of receipt of the application submitted under subsection (1) of Section 11B then interest would be payable at such rate as may be fixed by the Central Government on the expiry of the period of three months from the date of the receipt of the application. The explanation after the proviso to Section 11BB introduces a deeming fiction, namely, that where an order for refund of duty is not made by Assistant Commissioner of Central Excise but by the appellate authority or by the Court then for the purpose of this section the order made by such higher appellate authority or by the Court shall be deemed to be an order passed under sub-section (2) of Section 11B of the Act.

7. From the aforesaid explanation, it is apparently clear that interest becomes payable on the expiry of the period of three months from the date of the receipt of the application for refund under sub-section (1) of Section 11B of the Act.

8. In Ranbaxy Laboratories Ltd. Vs. Union of India (UOI) and Others, the Supreme Court held that the explanation after the proviso to Section 11B introduces a deeming fiction, namely, that where an order for refund is not made by the Assistant Commissioner but by the appellate authority such appellate order would be deemed to be an order passed under Section 11B(2) of the Act. In the light of the aforesaid, we do not find any merit in the appeal. The question of law framed aforesaid is answered against the department and in favour of the respondent. The appeal fails and is dismissed.