(1997) 07 SC CK 0037

In the Supreme Court Of India

Case No : Civil Appeal No. 6102 of 1995

Executive Engineer, Workshop Division, M.P. Electricity Board APPELLANT

Vs

Collector of Central Excise, Mor Office Raipur, M.P. RESPONDENT

Date of Decision : 29-07-1997

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B, 11B(1)

Citation : (1997) 94 ELT 445 : (1998) 7 JT 500 : (1997) 5 SCALE 629 : (1998) 9 SCC 172

Hon'ble Judges : S. C. Agrawal, J;M. Jagannadha Rao, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal raises the question whether the claim for refund of excise duty made by the appellant was barred by limitation u/s 11-B of the Central Excises and Salt Act, 1944 (hereinafter referred to as "the Act"). The appellant is invoking the second proviso to sub-section (1) of Section 11-B which prescribes that the limitation of six months shall not apply where any duty has been paid under protest. The Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal") in the impugned judgment dated 8-12-1994 has not accepted the contention of the appellant that the payment was made under protest.

2. The facts, in brief, are as follows:

The Central Workshop of the M.P. Electricity Board (hereinafter referred to as "the Electricity Board") at Bhilai undertakes the fabrication of transmission line towers, sub-station structures and line hardware materials. On 29-11-1976, the Inspector, Central Excise, Raipur addressed a letter to the Divisional Engineer at the Central Workshop of the Electricity Board wherein it was stated;

"I have to state that the above-mentioned workshop manufactures goods falling under Tariff Item 68 of the Ist Schedule to the Central Excise Act, 1944. A duty of Central excise @ 1% is leviable on such goods with effect from 1-3-1975. The factory has not yet been licensed under the Central Excises and Salt Act, 1944 to manufacture the said goods. You are, therefore, requested to supply the following particulars in respect of the goods manufactured in the factory and oblige."

The particulars that were required to be supplied were regarding the name of the goods manufactured from 1-3-1975 up to date, their quantity and value as well as the quantity and value of the goods removed outside the factory from 1-3-1975 up to date and the quantity and value on balance on 29-11- 1976.

3. In reply dated 30-11-1976, to the said letter the Divisional Engineer at the Central Workshop of the Electricity Board stated:

"In this connection, it is to intimate that the Central Workshop at Bhilai set up by the M.P. Electricity Board is undertaking the fabrication of transmission fine towers and sub-station structures and line hardware materials in connection with the power supply in the State of Madhya Pradesh. In view of this, it is felt that the provisions of the Central Excise Rules, 1944 regarding obtaining licence and payment of excise duty may not be applicable to the Central Workshop, MPEB, Bhilai. However, as you have emphasised the necessity of obtaining a licence, we are submitting our application in Form AL-4 for issue of licence for our Central Workshop, Bhilai under protest."

Thereafter the Electricity Board took the licence required under the Central Excise Rules and also paid the excise duty. Subsequently a claim for refund was made by the appellant which was rejected by the Assistant Collector of Central Excise (Appeals) and the Tribunal. In the impugned judgment, the Tribunal has held that protest was lodged only regarding applying for Central excise licence and not to payment of excise duty. The Tribunal was also of the view that the ground for protest as spelt out in the letter dated 30-11-1976 was that duty was not payable for the reason that the workshop had been set up by the Electricity Board for fabrication of towers, structures, etc., in connection with the power supply in the State of Madhya Pradesh and that the said protest could not sustain the claim for refund lodged on the ground that the product was not a manufactured item classifiable under Tariff Item 68.

4. Shri Asthana, the learned counsel appearing for the appellant, has urged that the Tribunal was in error in holding that the payment of duty was not made under protest. Reliance has been placed on the decision of this Court in India Cements Ltd. v. CCE, 1989 (2) SCC 676 : 1989 SCC (Tax) 348 wherein this Court has laid down that no form is prescribed for payment of duty under protest and if letter of protest shows that the assessee was not accepting the liability without protest then that would be sufficient. Shri Asthana has also urged that the Tribunal was in error in proceeding on the basis that since the ground on which the Electricity Board was disclaiming the liability to pay the duty in the letter dated 30-11-1976 was different from the ground on which the claim for

refund was based the said letter of protest could not be regarded as a protest to support the claim for refund. In support of this submission Shri Asthana has invited our attention to the observations contained in the judgment of B.P. Jeevan Reddy, J., speaking for the majority, in Mafatlal Industries Ltd. v. Union of India, 1997 (5) SCC 536 c of Section 11-B of the Act and Rule 233-B of the Central Excise Rules, has held that the assessee need not particularise the grounds of protest and that it would be open to him to say that according to him the duty is not exigible according to law.

5. The question that requires consideration is whether the letter dated 30-11-1976 sent by the Divisional Engineer, Central Workshop of the Electricity Board can be regarded as a protest against payment of excise duty for the purpose of second proviso to Section 11-B of the Act. In our opinion, the said letter cannot be read in isolation. It has to be read along with the letter of the Inspector of Central Excise dated 29-11-1976. In the letter of the Inspector of Central Excise it is stated that the Workshop of the Electricity Board manufactures goods falling under Tariff Item 68 of the First Schedule to the Act and that the duty of Central excise @ 1% ad valorem is leviable on such goods with effect from 1-3-1975. In the said letter the Inspector of Central Excise, after stating that since the factory of the Electricity Board had not yet been licensed under the Central Excise Act and the Rules to manufacture the said goods, requests the Divisional Engineer at the Central Workshop to supply the particulars in respect of the goods manufactured in the factory. The said information was sought in order to enable the Excise authorities to recover the excise duty on the goods that were being manufactured in the Central Workshop which, according to him, were liable to payment of excise duty @ 1% ad valorem since they were falling under Tariff Item 68 of the First Schedule to the Act. In reply to the said letter the Divisional Engineer, Central Workshop, in his letter dated 30-11-1976 took the stand that the Central Workshop at Bhilai was undertaking the fabrication of transmission line towers and sub-station structures and line hardware materials in connection with the power supply in the State of Madhya Pradesh and that the provisions of the Central Excise Rules regarding obtaining licence and payment of excise duty may not be applicable to the Central Workshop. In other words the Divisional Engineer had taken the stand that excise duty was not payable on the goods that were being manufactured in the workshop. In the said letter the Divisional Engineer further stated that having regard to the fact that the Inspector of Central Excise had emphasised the necessity of obtaining a licence, he (the Divisional Engineer) was submitting an application in Form AL-4 for issue of licence for the Central Workshop, Bhilai under protest. A narrow interpretation of the said letter would give the impression that the Divisional Engineer was only lodging his protest against obtaining a licence. But, in our opinion, the said letter has to be read as a whole in the context in which the requirement for obtaining licence was being insisted, namely, that the goods manufactured at the Central Workshop were leviable to excise duty under Tariff Item 68, which liability was disputed by the Divisional

Engineer. The letter of the Divisional Engineer dated 30-11-1976 must therefore be construed to mean that protest was lodged in the said letter both against obtaining the licence as well as against liability to payment of excise duty. In these circumstances we are unable to agree with the Tribunal that payment of duty was not made under protest. On that view of the matter the impugned judgment of the Tribunal cannot be upheld and has to be set aside.

6. The appeal is, therefore, allowed, the judgment of the Tribunal dated 8-12-1994, as well as orders passed by the Collector, Central Excise (Appeal) and the Assistant Collector, Central Excise are set aside and the matter is remitted to the Assistant Collector, Central Excise to deal with the application for refund on merits. No order as to costs.