
(2010) 03 P&H CK 0097
In the Punjab And Haryana At Chandigarh

Janak Steel Tubes Limited

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 11B, 4

Citation : (2010) 177 ECR 9 : (2010) 28 STT 488

Hon'ble Judges : Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mehinder Singh Sullar, J.—The matrix of the facts, culminating in the commencement of, relevant for disposal of the present appeal filed by the appellant-assessee Janak Steel Tubes Limited (for brevity "the assessee") and emanating from the record is that the assessee was engaged in manufacture of M.S.Tubes/Pipes, clearing its final products at factory gate and also through consignment on provisional basis, for which, the differential duty was discharged at a later stage. The clearance was finalized under Rule 9(b) of the Central Excise Rules, 1944 (for short "the Rules").

2. The assessee filed the refund claim for the period with effect from 1.4.1996 to 27.9.1996 on the ground that they paid the excess duty on the price of consignment sales, which was not payable u/s 4(1)(a) of the Central Excise Act, 1944 (hereinafter to be referred as "the Act"). The duty was payable on the normal value ascertainable at factory gate and not on the sale price of consignment agent. Thus, the assessee claimed the refund of Rs. 3,35,992/- as excess duty paid by them, being the differential duty.

3. The claim of the assessee was negated by the Assistant Commissioner, vide order dated 28.11.1997 (Annexure A3). In the wake of the appeal filed by the assessee, the Commissioner (Appeals) remanded the matter for fresh decision, vide order dated 22.9.1999 (Annexure A5). Consequently, the Assistant

Commissioner, Central Excise Division, Rohtak sanctioned the refund claim amounting to Rs. 2,92,166/-, vide order dated 12.4.2000 (Annexure A6) u/s 11B of the Rules.

4. Aggrieved by the order (Annexure A6), the revenue filed the appeal, which was accepted by the Commissioner (Appeals), vide order dated 11.11.2004 (Annexure A9) and ordered the recovery of refunded amount u/s 11A of the Act.

5. Again aggrieved by the impugned order (Annexure A9), the assessee filed the appeal, which was dismissed by the Customs, Excise and Service Tax Appellate Tribunal, vide order dated 15.2.2007 (Annexure A11).

6. The assessee still did not feel satisfied with the impugned order (Annexure A11) and filed the present appeal.

7. Assailing the impugned order (Annexure A11), at the very outset, the learned Counsel for the assessee has vehemently argued that as the Tribunal has fell in legal error in dismissing its appeal on a technical ground that the assessee did not file the appeal against the orders dated 5.3.1997 and 5.5.1997 of finalization of provisional assessments, therefore, the appeal was not maintainable. The argument is that since the inter-departmental letters dated 5.3.1997 and 5.5.1997 cannot legally be termed as assessment orders, so, the assessee was not required to file the appeal against these communications. Raising a variety of arguments, in all, according to the learned Counsel for the assessee that the Tribunal ought to have decided the matter for refund of the amount of excess duty on merits. Hence, he prayed for acceptance of this appeal.

8. Hailing the impugned order, on the other hand, learned Counsel for the revenue has urged that in the absence of filing the appeal against the indicated orders by the assessee, the appeal filed by it was not maintainable, which was rightly dismissed by the Tribunal and no interference is warranted, in this respect.

9. Having regard to the rival contentions of the learned Counsel for the parties, we are of the view that the Tribunal has committed a legal error in dismissing the appeal of the assessee, being not maintainable.

10. It is not a matter of dispute that the Tribunal dismissed the appeal of the assessee mainly on the ground that it did not file any appeal against the finalization of provisional assessment, therefore, the appeal was not maintainable. Again, it is a matter of fact that the letter dated 5.3.1997 (Annexure A1) is an inter-departmental letter written by the Assistant Commissioner to Superintendent, Central Excise Range, Hisar, which is in the following terms:

Sub: Finalization of Provisional Assessments of M/s Janak Steel Tubes Ltd. Hisar.

Please refer to your office letter C. No. CE-20/Prov. Asstt./JSTL?HSR/96/956 dated 14.2.97 on the above cited subject.

2. In view of your report mentioned above, you are directed to finalise the

assessments upto Sep.96. While finalizing the assessments following remarks should be marked on the RT-12 returns:

Assessments finalized subject to the production of sale details of depots in respect of balance differential duty as may be quantified on the basis of such sales details.

As regards expiry of Bank Guarantee on 31.3.97 furnished with B-13 Bond by the party, you are requested to get the same revalidated for further period of one any, involved on the goods lying unsold at Depots.

11. Sequelly, second letter dated 5.5.1997 written to the assessee is as under:

In compliance of letter of C. No. V (85) 3/JST/47/93/1962 dated 5.3.97 issued by the Rohtak, Provisional assessment of your firm for the period April 96 to Sept.96 is hereby finalized subject to production of sale details of depots in respect of balance stock lying unsold at Depots and deposit of differential duty as may be quantified on the basis of such sales details.

12. Meaning thereby, there is no formal expression of an adjudication of the real controversy between the parties in the aforesaid letters. The interdepartmental letters dated 5.3.1997 and 5.5.1997 written in the absence of the parties cannot possibly be termed as legal orders, against which, the assessee was required to file appeal. Therefore, we are of the view that the Tribunal has fell in legal error in dismissing the appeal of the assessee in this respect on the ground of its maintainability. The Tribunal ought to have decided the real controversy between the parties on merits instead of dismissing the appeal on technical ground in this regard.

13. In the light of the aforesaid reasons, the present appeal is hereby accepted and the impugned order (Annexure A11) is accordingly set aside. The matter is remitted back to the Tribunal for its fresh decision on merits in accordance with law.