

(2003) 12 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No. 16078 of 2003

Mamta Machinery Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 02-12-2003

Acts Referred:

Central Excise Rules, 1944 — Rule 173L(4)

Citation : (2005) 126 ECR 157 : (2005) 184 ELT 359

Hon'ble Judges : K.A. Puj, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Amar P. Dave, for the Appellant; D.N. Patel, SCGSC, for the Respondent

Final Decision : Allowed

Judgement

A.R. Dave, J.—RULE. Service of rule is waived by Senior Standing Counsel Mr. D.N. Patel for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. The petitioners are aggrieved by an order dated 12-9-2002 bearing No. A/1140/02-NB-SN passed by the CEGAT. By virtue of the impugned order, an appeal filed by the petitioners has been dismissed and thereby an order passed by the Commissioner (Appeals), Central Excise & Customs, Ahmedabad dated 14-12-2001 refusing grant of refund in favour of the petitioners has been confirmed.

3. The case of the petitioners is that the petitioners had manufactured four automatic bag making machines. When the said machines had been cleared out of the premises of the petitioner-company, excise duty had been paid. "The said machines had been returned within a period of one year from the date of its clearance and thereafter, the petitioner-company had remade the machines which had been cleared on payment of excise duty. In the circumstances, an application for refund of excise duty had been submitted. The said application

had been rejected by the Assistant Commissioner and, therefore, an appeal had been filed before the Commissioner (Appeals). The appeal had been dismissed and, therefore, the petitioners had approached the CEGAT and the CEGAT also dismissed the appeal by virtue of the impugned order.

4. It is not in dispute that the machines had been remade and they had been cleared after they had been returned after first clearance. It is also not in dispute that excise duty has been paid on both the occasions when the said machines had been cleared. The Commissioner (Appeals) rejected the appeal filed by the petitioners on the ground that necessary account had not been rendered to the satisfaction of the Assistant Commissioner within a period of six months. The accounts had been submitted on 11-8-1998 whereas the machines had been returned on 22-1-1998 and intimation thereof was given to the respondent authorities on 23-1-1998. Thus, for the aforesaid reason, the Commissioner (Appeals) had confirmed the order of the Assistant Commissioner whereby the refund application had been rejected.

5. Being aggrieved by the order passed in appeal, the petitioners, had approached the CEGAT. The CEGAT dismissed the appeal only on the ground that an application for refund had been submitted after a period of six months. In para 3 of the order passed by the CEGAT, it has been stated that the machines had been returned on 22-1-1998 and the petitioners had claimed refund on 11-8-1998.

6. Upon perusal of the record, it is clear that the fact stated by the CEGAT with regard to making an application for refund is incorrect. An application for refund was made by the petitioner-Company on 23-2-1998 which was received by the concerned respondent on 27-2-1998. The said fact has not only been admitted in Affidavit-in-reply but photostat of original application for refund has also been found from the record of the respondents.

7. The aforesaid fact could not be disputed by Senior Standing Counsel Mr. D.N. Patel appearing for the respondents. In view of the above fact, in our opinion, CEGAT erred while dismissing the appeal. The order, therefore, deserves to be quashed and set aside.

8. The only other point which remains against the petitioners is that the accounts of expenses about remaking of the machines had been rendered to the Assistant Commissioner after six months. Though the CEGAT has not dealt with the said point, it appears from the order of the Commissioner (Appeals) that the petitioners, though they had submitted an application for refund within the prescribed period, had not rendered accounts within the prescribed period. Thus, there was some delay in rendering the accounts.

9. Provisions of Rule 173L(4) of the Central Excise Rules, 1944 gives a discretion to the Chief Commissioner to relax the provision of the said rule for the purpose of admitting a claim for refund. At the relevant time, the Commissioner of Central Excise, Ahmedabad-I could have relaxed the provisions of the rule. In the

instant case, as there was some delay in rendering the accounts, in our opinion, little delay in rendering the accounts should not be a reason for rejection of refund application especially when the refund application had been submitted in time and the authorities were satisfied with remaking of the machines.

10. At the relevant time, provisions of Rule 173L(4) had given discretion to the Commissioner, Central Excise for relaxing the provisions of the said rule for the purpose of admitting a claim for refund. What we feel that had the petitioners approached the concerned authority at relevant time, the concerned authority would, have surely exercised his powers in good faith and would have relaxed the provision so as to enable the petitioners to get the amount of refund. At this stage, after more than five years, to ask the petitioners to approach the concerned authority so as to use his power under the provisions of Rule 173L(4) would be quite harsh upon the petitioners and, therefore, we use our discretion and power under this writ jurisdiction and direct the respondent authorities to condone the delay caused in rendering the accounts.

11. The impugned order passed by the CEGAT dated 12-9-2002 bearing No. A/1140/02-NB-SN is hereby quashed and set aside. The respondents are directed to make the payment of refund to the petitioner Company within a period of eight weeks from the date of receipt of certified copy of this judgment. The petition stands disposed of as allowed with no order as to costs. Rule is made absolute.