

(2018) 02 GAU CK 0050
In the Gauhati High Court
Case No : 8 of 2016

M.K. JOKAI AGRI PLANTATIONS P LTD and ANR	APPELLANT
Vs	
COMMISSIONER CENTRAL EXCISE and SERVICE TAX	RESPONDENT

Date of Decision : 20-02-2018

Acts Referred:

Citation : (2018) 02 GAU CK 0050

Hon'ble Judges : Ajit Singh, Manojit Bhuyan

Bench : Division Bench

Advocate : A GOYAL, Dr.AK Saraf, Z. Islam, S.K. Kejriwal, P. Das, B Sarma

Judgement

1. This common judgment shall decide C. Ex. Appeal Nos.8, 9 and 10, all of 2016, because they are admitted on the same substantial questions

of law and were heard together. The substantial questions of law are as under:-

(1) Whether the order dated 29.02.2016 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench,

Kolkata ("CESTAT") is based on correct appreciation of the provisions of the Notification No.33/99-CE dated 8.07.1999 ?

2) Whether the CESTAT was legally justified in holding that the claim of refund of the appellant was barred by limitation in spite of

the fact that there was no requirement of filing refund application under the provisions of Section 11 B of the Central Excise Act,

1944, in cases of exemption under Notification No. 33/99-CE dated 8.07.1999 and whether the assessee is not entitled to refund of

Excise duty under Notification No.33/99-CE dated 8.07.1999 on payment of duty on specified goods and filing of RT 12 return in

the manner prescribed under the Central Excise Rules ?

3) Whether merely on the ground of delay of filing of the statement under para 2(a) of the Notification No.33/99-CE dated

8.07.1999 showing duty payment particulars can result in denial of Excise refund benefit to the appellant under the aforesaid

Notification where the RT 12 returns were regularly filed within the specified period showing Central Excise duty paid during the

period in question ?

4) Whether the assessee can be denied the substantial benefit of refund available as per Notification No.33/99-CE dated 8.07.1999

merely on the ground of lapse in following procedural requirements ?

5) Whether the CESTAT was justified in not following the earlier decisions of the coordinate benches on the same issue wherein the

coordinate benches of the Tribunal held in respect of same Notification No.33/99-CE dated 8.07.1999 that no formal application is

required to be filed under Section 11 B of the Central Excise Act, 1944 for claim of refund and refund is to be allowed on the basis

of monthly returns filed?

2. Briefly stated the facts are that M/s Hattiali Tea Estate, M/s Muttuck Tea Estate and M/s Bokel Tea Estate were earlier owned by M.K.Shah

Exports and they came under the ownership of appellant's company pursuant to demerger with effect from 1.4.2013. As the name suggests, the

appellant is the manufacturer of Tea including Tea Waste under subheading No.0902.00 of the Central Excise Tariff Act.

3. The Union of India, vide Memorandum dated 24.12.1997, unveiled a New Industrial Policy for the North Eastern Region and in order to give

stimulation to the development of Industrial Infrastructure to the North Eastern Region, the said Region was made tax free for a period of 10 years

giving incentives to those who wanted to establish Industries in the Region. Pursuant thereto, Notification No.33/99-CE dated 8.7.1999 was

issued granting all exemptions contained therein to New Industrial Units which commenced their commercial production on or after 24.12.1997

and Industrial Units existing before 24.12.1997 but had undertaken substantial expansion by way of increase in installed capacity by not less than

25% on or after 24.12.1997. The Notification also stated the manner in which the exemptions contained therein shall be given effect to.

4. The appellant after claiming that all the three Industrial Units had undertaken substantial expansion to the extent of more than 25% submitted

returns in the form RT-12 for the period from July, 1999 to March, 2003 evidencing the duty paid. But the Assistant Commissioner of Central

Excise did not refund the amount of duty paid as per Notification. The appellant therefore submitted applications on 25.6.2005 and 26.7.2005

claiming the refund of the amount of duty paid. Statements of duty paid for the three Units amounted to Rs.56,83,856/-; Rs.39,33,061/- and

Rs.91,49,425/- respectively. These amounts were for the period from July, 1999 to February, 2003. In support of the claim, the appellant also

submitted number of additional documents.

5. The Assistant Commissioner of Central Excise was, however, not convinced that the Units had undertaken substantial expansion of 25% or

more. He was also of the view that since the claim for refund was submitted after a lapse of more than 5 years from the date of expansion, the

same cannot be accepted. He, therefore, issued show cause notices dated 22.4.2009 and 12.12.2010 asking the appellant why its claim for

eligibility and refund of duty paid should not be rejected.

6. The appellant submitted detailed replies to the show cause notices and reiterated that the Units had undertaken substantial expansion in terms of

the condition of the Notification and therefore, refund of duty paid cannot be denied on the grounds of eligibility and delay. The response of the

appellant did not appeal to the Assistant Commissioner and he rejected the claim for refund of duty paid vide order dated 9.7.2010.

7. Aggrieved, the appellant filed appeals before the Commissioner (Appeals), who held that appellant had submitted refund claims on month to

month basis in RT-12 returns showing clearance and duty paying details as well as reports of expansion of the Units by more than 45.80%, 57%

and 27.56% respectively after 24.12.1997 and therefore the same could not have been rejected on the grounds of eligibility and delay. The

Commissioner (Appeals) also gave a specific finding that the appellant fulfilled the required conditions of the Notification for eligibility and refund of

duty paid. And, on these findings, he, vide order dated 24.12.2012, allowed the appeals with a direction that appellant be given the benefit of

exemptions for which it is actually entitled to.

8. The Respondents challenged the order dated 24.12.2012 of the Commissioner (Appeals) by filing three separate appeals before the Customs, Excise and Service Tax Appellate Tribunal (in short ""Tribunal"") and in none of these appeals, the finding of the Commissioner (Appeals) that appellant is eligible for the benefit of refund was challenged. The finding that the appellant is eligible for the benefit of exemption therefore attained finality. The Tribunal however disagreed with the Commissioner (Appeals) that appellant fulfilled the condition of Notification entitling it for refund and allowed the appeals by a common impugned order dated 29.2.2016. According to the Tribunal, statement of duty paid made in RT-12 returns in the absence of specific claim for refund of duty does not fulfill the condition of Notification. The Tribunal has also held that the Revenue cannot be expected to grant suo motu refund under the Notification where no such claim is made by 7th of next month either in the specific statement under the exemption Notification or in RT-12 return filed. The Tribunal, lastly, held that since the refund claim was made after 5-6 years, the same was time barred. It is in this backdrop, the appellant has filed the present appeals.

9. It is argued on behalf of the appellant that statement of duty paid submitted in the RT- 12 returns by the 7th of next month in which the duty was paid from the account current was substantial compliance and therefore the Assistant Commissioner ought to have refunded the amount of duty paid by the 15th of next month or if there was any doubt, he should have refunded the amount on provisional basis. It has also been argued that in any case, the refund of duty paid cannot be denied to the appellant on the ground of delay as no limitation is prescribed in the Notification. On the other hand, the learned counsel for the Revenue has defended the order passed by the Tribunal.

10. The relevant Clauses 2 and 3 of the Notification are re-produced below for ready reference:-

2. The exemption contained in this Notification shall be given effect to in the following manner, namely -

(a) The manufacturer shall submit a statement of the duty paid from the said account current to the Assistant Commissioner or the

Deputy Commissioner of Central Excise, as the case may be, by the 7th of the next month in which the duty has been paid from the

account current.

(b) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after such

verification, as may be deemed necessary, shall refund the amount of duty paid from the account current during the month under

consideration to the manufacturer by the 15th of the next month.

(c) If there is likely to be any delay in the verification, Assistant Commissioner of Central Excise or the Deputy Commissioner of

Central Excise, as the case may be, shall refund the amount on provisional basis by the 15th of the next month to the month under

consideration and thereafter may adjust the amount of refund by such amount as may be necessary in the subsequent refunds

admissible to the manufacturer.

3. The exemption contained in this Notification shall apply only to the following kind of units, namely:-

(a) New industrial units which have commenced their commercial production on or after the 24th day of December, 1997;

(b) Industrial units existing before the 24th day of December, 1997 but which have undertaken substantial expansion by way of

increase in installed capacity by not less than twenty five per cent on or after the 24th day of December, 1997.

11. A bare reading of the above quoted clauses of the Notification makes it clear that the appellant was first required to prove its eligibility for

notified exemptions by establishing that the three industrial units had undertaken substantial expansion of not less than 25% on or before 24th day

of December, 1997 and then file every month's statement of duty paid from the account current to the Assistant Commissioner. And, if these two

conditions were fulfilled, the appellant was entitled to refund of the amount of duty paid. As seen above, the appellant has fully established before

the Commissioner (Appeals) that the three industrial units had undertaken increase by more than 45.80%, 57% and 27.56% after 24.12.1997. The

finding of the Commissioner (Appeals) confirming this position was not questioned by the Revenue in appeals filed before the Tribunal. The

eligibility of the appellant for the benefit of exemptions and refund of duty paid stands conclusively proved. Clause 2(a) of the Notification only says

that the manufacturer shall submit a statement of the duty paid by 7th of next month in which the duty has been paid from the account current. The

Notification nowhere mandates the manufacturer to submit a separate claim for refund of duty paid. The appellant has admittedly been submitting

statements of the duty paid from account current in RT-12 returns within time with all details before the Assistant Commissioner. The appellant

having been once found to be eligible for exemptions and refund of duty paid, denial of benefit of exemptions and refund on the ground of delay, in

our considered opinion, will cause grave injustice which cannot be permitted. Even otherwise, it is well settled law that non-following of procedural

requirement cannot deny the substantive benefit, otherwise available to the assessee. Also exemptions made with a beneficial object like growth

of Industry in a Region have to be liberally construed and a narrow construction of the Notification which defeats the object cannot be accepted.

For these reasons, we conclude that the impugned order of the Tribunal is not based on correct appreciation of the provisions of Notification and

denial of refund (of duty paid) to the appellant on the ground of delay is wholly unjustified. We also hold that statements of duty paid submitted in

RT-12 returns by the appellant was substantial compliance of Clause 2(a) of the Notification and there was no need for it to submit a separate

statement of the duty paid and claim refund. The Tribunal itself earlier in number of cases viz. Commissioner of Central Excise vs. Vinay Cement

Ltd., 2002 (147) E.L.T. 74; Commissioner of Central Excise vs. Napuk Tea Estate, 2007 (219) E.L.T. 178 and Dhunseri Tea Estate vs.

Commissioner of Central Excise, 2011 (274) E.L.T. 590 has held that statements of duty paid submitted in RT-12 returns amounts to full

compliance of Clause 2(a) of the Notification and refund of duty paid cannot be denied for want of separate statement of such duty paid. A long

standing decision adopting a particular construction which may have been acted upon by persons in the general conduct of affairs may not be

departed from on the doctrine of stare decisis.

12. With these findings, we answer all the substantial questions of law in favour of the appellant. We accordingly set aside the impugned order

dated 29.2.2016 passed by the Tribunal and allow the appeals with cost of Rs.3000/-.