(2003) 03 SC CK 0081

In the Supreme Court Of India

Case No : Civil Appeals Nos. 6456-58 Of 2000

National Winder APPELLANT

Vs

Commissioner of C. Ex., Allahabad RESPONDENT

Date of Decision : 11-03-2003

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11B, 12A

Citation : (2003) 88 ECC 2 : (2003) 110 ECR 268 : (2003) 154 ELT 350 : (2003) 11 SCC 361

Hon'ble Judges : S. N. Variava, J;B. P. Singh, J

Bench : Division Bench

Advocate : A.R. Madhav Rao, Alok Yadav and B. Balachandran, for the Appellant; Rajiv Nanda and B. Krishna Prasad, for the Respondent

Final Decision : Allowed

Judgement

1. These appeals are against a decision of the Larger Bench of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT). The majority have held that a purchaser who claims refund u/s 11B must do so within six months of the date of purchase of the goods. It is held that the purchaser is not entitled to the benefit of the proviso to that Section even if the manufacturer has paid the duty under protest.

2. To consider the question, it is necessary to set out herein the relevant portion of Section 11B. The relevant portion of Section 11B reads as un-der:-

"SECTION 11B. Claim for refund of duty. - (1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of six months 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 in relation to which such refund is claimed was collected from, or paid by him and the incidence of 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 Excise and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this subsection as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act:

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

(2) and (3)..

Explanation. - For the purpose of this section -

(A) ....

(B) 'relevant date' means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacture has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;" (Emphasis added)

3. Section 11B was amended in 1991. After the amendment by virtue of sub-clause (a) in Explanation "B" of Section 11B even a purchaser can claim refund. A manufacturer has to file his claim for refund within six months from the relevant date. The purchaser also has to file a claim for refund within six months from the date of purchase of the goods. The wordings of the proviso are relevant viz., "Provided further that the period of limitation of six months shall not apply where any duty has been paid under protest". Significantly/ the proviso does not state that the period of limitation of six months will not apply where no protest has been lodged by the purchaser. Duty will always be paid by the manufacturer. Under Rule 233-B, at the time the manufacturer pays duty, he has to lodge a protest. A receipt or endorsement of "duty paid under protest" is issued to the manufacturer. There is no Rule or provision by which protest can be lodged by a purchaser. The wording of the proviso shows that the Legislature has worded the proviso in a manner which covers all claims for refund. The wide language of the proviso shows that it covers not just claims for refund by the manufacturer but also claims for refund by the purchaser. Thus, if duty is paid by a manufacturer under protest, then the limitation of six months will not apply even to a claim for refund by the purchaser.

4. We are, therefore, unable to accept the majority view. The impugned judgment accordingly needs to be and is hereby set aside.

5. However, it must be clarified that before refund can be claimed either by the manufacturer or by the purchaser, the conditions of Section 11B must be fulfilled viz., it must be shown that the amount of duty of excise in relation to which such refund is claimed was "collected from or paid" by the person claiming refund and that the incidence of such duty has not been passed on by him to any other person. Therefore, even in a claim for refund by the purchaser, he would have to satisfy the Department that these conditions are fulfilled before any refund can be made to him.

6. In this view of the matter, we remit the matter back to the appropriate authority for consideration in the light of the law laid down herein.

7. The appeals stand disposed of accordingly. There will be no order as to costs.

