

(1994) 11 SC CK 0087

In the Supreme Court Of India

Case No : Civil Appeal No's. 1306-1307 of 1987

Porcelain Electrical Mfg. Co.

APPELLANT

Vs

Collector of Central Excise, New Delhi

RESPONDENT

Date of Decision : 29-11-1994

Acts Referred:

Citation : (1998) 98 ELT 583 : (1998) 9 SCC 637

Hon'ble Judges : R. M. Sahai, J;K. S. Paripoornan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The question that arises for consideration in these appeals directed against the order of Customs, Excise & Gold. (Control) Appellate Tribunal, New Delhi is whether the Tribunal was justified in rejecting the claim for refund for the period which was beyond six months from the date the duty was paid.

2. Various items of porcelain manufactured by the appellant for use as components of insulating device were assessed to duty under Tariff Item 23-B-CET. In The English Electric Co. of India Ltd. Vs. The Superintendent, Central Excise and Others, the Madras High Court held that such items were not dutiable under Item 23-B. It is not disputed that this decision has been upheld by this Court. The appellant, therefore, on 12-6-1978 and 16-6-1978 filed two applications for refund of duty paid by it before the Assistant Collector for the period 1-4-1977 to 31-3-1978 and 18-6-1975 to 31-3-1977 respectively. It was claimed that in view of the decision in English Electric Co. the insulators manufactured by the appellant could not have been classified under Tariff Item 23-B. The Collector did not dispute the claim of the appellant that the insulators were not dutiable but the claim for refund was rejected as, according to the Collector, it was beyond six months, the period of limitation provided under Rule 11, as it then stood, for making an application for refund from the date the duty was paid. In appeal before the Tribunal, it was claimed that since duty had been paid under mistake of law, the claim for refund was not governed by the

provisions of Rule 11 of the Central Excise Rules, 1944, and the period applicable was three years from the date of knowledge of the mistake under the Limitation Act, 1963. The plea was repelled by the Tribunal and it was held that limitation having been provided under the Act the Department could not go against it.

3. In challenging the order of the Tribunal the learned counsel for the appellant urged that the duty having been paid under mistake of law, the period of limitation applicable was three years. Reliance is placed on Commissioner of Sales Tax, U.P. Vs. Auriaya Chamber of Commerce, Allahabad, , D. Cawasji and Co. and Others Vs. State of Mysore and Another, and English Electric Co. None of these decisions appear to be helpful. The decisions were rendered in cases in which the assessee had sought its remedy by way of invoking extraordinary jurisdiction of the High Court or this Court and it was in those cases that the Court held that the period of limitation was three years.

4. In our opinion, the controversy stands concluded by the decision of this Court in Collector of Central Excise, Chandigarh Vs. Doaba Co-operative Sugar Mills Ltd., Jalandhar, .The relevant observations are extracted below:

"But in making claims for refund before the departmental authority, an assessee is bound within four corners of the statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act."

5. Since the appellant had filed an application under Rule 11 read with Rule 173-J and sought its remedy under the statute, it was bound by the limitation provided under the Act and the Rules. It was not open to the appellant to claim that even though the period of limitation was provided under the statute for refund, the application filed by it should be processed and considered under the general law of limitation.

6. In the result, the appeals fail and are dismissed. But there shall be no order as to costs.