
(2008) 10 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.C.C. No. 50 of 2005

STI India Ltd.

APPELLANT

Vs

Commissioner of Cus. and C. Ex.

RESPONDENT

Date of Decision : 17-10-2008

Acts Referred:

Central Excise Rules, 1944 — Rule 57F
Central Excises and Salt Act, 1944 — Section 11B, 35G

Citation : (2010) 19 STR 614 : (2011) 30 STT 187

Hon'ble Judges : S.R. Waghmare, J; A.M. Sapre, J

Bench : Division Bench

Advocate : P.M. Choudhary, for the Appellant; Vinay Zelawat, Asstt. Solicitor General and Tuganawat, for the Respondent

Final Decision : Allowed

Judgement

1. This is an appeal filed by Assessee u/s 35G of Central Excise Act, 1944 against an order dated 21-4-2004 passed by Customs Excise and Service Tax Appellate Tribunal (for short Tribunal) in E/Appeal/No. 3715/2003-NB(c) which in turn arise out of an Order-in-Appeal No. 377/03 dated 14-7-2003 passed by Commissioner (Appeals) Central Excise, Indore.

Facts of the case lie in a narrow compass:

2. The appellant is a limited company engaged in the business of cotton yarn, cotton fabric and cotton polyester yarn. It is the case of appellant that they availed Modvat credit of the duty paid inputs during October 1998 to December 1998. However, since appellant during relevant time were also availing the benefit under EPCG Scheme by exporting their goods in order to fulfill their export obligation and hence there was hardly any sale of their finished goods indigenously. It was due to this reason, the appellant could not utilize the Modvat credit towards payment of excise duty.

3. The appellant therefore, filed a refund claim on 27-7-99 before Competent

Authority-Assistant Commissioner under Clause 6 of appendix to notification issued under Rule 57F which provides for refund of Modvat credit allowed on inputs and used in goods exported under Bond. The appellant claimed this refund of credit which was lying in their R.G.-23A Part II. It is this application, which was rejected by the Assistant Commissioner by order dated 30-12-99 as being barred by limitation. An appeal was filed by appellant to Commissioner (Appeal) against the order dated 30-12-99. The Commissioner (Appeal) dismissed the appeal and upheld the order of Assistant Commissioner. In further appeal to Tribunal, the same was dismissed by the impugned order by the Tribunal resulting in upholding of the orders passed by Assistant Commissioner and Commissioner (Appeal) referred supra. It is against these orders; the Assessee has felt aggrieved and filed this appeal.

3.1 Heard Shri P.M. Choudhary, learned Counsel for the Appellant and Shri Vinay Zelawat, learned Asstt. Solicitor General with Shri Tuganawat for the Respondent.

4. Having heard the learned Counsel for the parties and having perused the record of the case, we are inclined to allow the appeal and set aside the orders impugned herein.

5. In our considered view, the authorities concern erred in rejecting the application made by appellant (Assessee) on the ground of limitation. It should have been held to be in time.

6. It is not in dispute that claim for the quarter October, 98 to December 98 was made on 27-7-99 by invoking Clause 6 of Appendix to notification issued under Rule 57F. In our view, the strict law of limitation provided in Section 11B of the Central Excise Act would not apply to the claim of refund claimed pursuant to notification issued under Rule 57F. It is in our opinion procedural in nature rather than mandatory (see 1991 (55) E.L.T. 437 (S.C.) : Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others, . In this case, what was required to be seen by the authorities was whether appellant had submitted along with application all necessary proof regarding exportation of goods and relevant extracts of form R.G. 23-A or deemed credit register maintained in respect of textile fabrics in original as the case may be as provided in Clause 6 of Appendix to notification issued under Rule 57F. Once the appellant (Assessee) was able to satisfy these requirements to the satisfaction of authority concern then they were entitled to claim the refund of duty paid on inputs.

7. In our opinion, merely because the refund application was not filed strictly within 6 months before expiry of period specified in Clause 6 of Appendix read with Section 11B *ibid* but was filed late by 27 days could not have been made the sole ground for the rejection of application as barred by limitation. In-fact, the claim in question did not fall strictly within the forecorners of Section 11B but it essentially fell within the forecorners of Clause 6 of Appendix to notification issued under Rule 57F.

8. In view of foregoing discussion, we are unable to concur with the view taken

by authorities below when they rejected the refund application of appellant only on the ground of limitation.

9. Accordingly, the appeal succeeds and is allowed. Impugned orders are set aside. As a consequence, the refund application made by appellant dated 27-7-99 is held to be within time. The authorities concerned who were seized of the application of appellant under consideration are hereby directed to examine the claim of appellant made in the application on merits, keeping in view the requirement of relevant notifications under consideration and other relevant provisions of Act/Rules and then pass appropriate orders on the claim of appellant.

No cost.