(1990) 02 KL CK 0034

In the High Court Of Kerala

Case No : Income Tax R. No. 50 of 1984

Talayar Tea Co.	APPELLANT
Vs	
Collector of Central Excise	RESPONDENT

Date of Decision : 13-02-1990

Acts Referred:
Central Excise Rules, 1944 — Rule 11

Citation : (1993) 64 ELT 13

Hon'ble Judges : K.S. Paripoornan, J;D.J. Jagannadha Raju, J

Bench : Division Bench

Advocate : C.M. Devan and C.N. Ramachandran Nair, for the Appellant; P. Santhalingam, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of an assessee the Customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench at Madras (in short, the Tribunal) has referred the following three questions of law for the decision of this Court:

"1. Whether under the provisions of Rule 11 of the Central Excise Rules, 1944, as it existed then, an application for refund has to be made to the concerned Assistant Collector?

2. Whether any person claiming refund of any duty paid by him could make an application addressed to the Assistant Collector of Central Excise and submit the same to the Superintendent under whose jurisdiction the claimant''s factory is situated?

3. Whether, in the latter event, for computing the time limit of six months under Rule 11, the date of receipt of application by the concerned Superintendent of Central Excise should be taken as the date of receipt of the application by the proper authority :-

(a) at any time?

(b) on or after 23-5-1979, the date of the Trade Notice No. 112/79 issued by the Collector of Central Excise, Cochin?

2. The respondent is the Revenue. The assessee is admittedly entitled to partial exemption from payment of excise duty in terms of Government Notification No. 198/76-C.E., dated 16-6-1976. The base period therefore, in the case of the assessee, who is a tea manufacturer, was fixed as 1975-76. The assessee-company had cleared 6,22,134 Kgs. of tea during the year 1978-79 and the excess over the base clearance was 70,039 Kgs. The period during which the clearance exceeded the base clearance was from 9-2-1979 to 31-3-1979. Under the terms of Notification No. 198/76 dated 16-6-1976 the appellant was entitled to refund of 25% of the excise duty paid on the above excess over the base clearance of 73,039 Kgs., which amounted to a sum of Rs. 11,503.64. On the 3rd of August 1979 the appellant filed a claim, dated 13-7-1979, for refund of the said amount, addressed to the Assistant Collector of Central Excise, Kottayam - vide Annexure B. It was filed in the Range office, Munnar. The Superintendent, Central Excise, by Annexure C, dated 16-10-1979, required the assessee to furnish certain information regarding the dates on which the assessee exceeded the base clearance during the year 1978-79. It was so furnished by the assessee. Thereafter the Superintendent of Central Excise addressed a communication dated 21-11-1979, to the Assistant Collector of Central Excise, Kottayam, stating that the assessee had made a claim for refund in Form Appendix I for Rs. 11,503.64, that the particulars given in the refund claim have been verified by the S.O. and certified as correct, that the Company has exceeded the base clearance on 9-2-1979, and that the refund claim was received in the office on 3-8-1979 and so the claim has been filed within the time prescribed. By order dated 31-1-1981, the Assistant Collector adverted to the above facts. But he held that the refund claim was received in his office only on 24-11-1979, which is after the expiry of six months'' period fixed under Rule 11 of the Central Excise Rules, 1944. The claim was rejected. The appeal against this order was rejected by the Appellate Collector, Central Excise, by order dated 31-3-1981 - Annexure H. The Appellate Tribunal concurred with the said decision - Annexure J dated 8-4-1983. It is thereafter, at the instance of the assessee, the questions of law, formulated hereinabove, have been referred for the decision of this Court.

3. We heard counsel. Rule 11 of the Central Excise Rules, 1944 is as follows :

"Rule 11, Claim for refund of duty :- (1) Any person claiming refund of any duty paid by him may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months from the date of payment of duty :

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

Counsel for the assessee submitted that the procedure, followed in the earlier years, was to file the application for refund with the Superintendent of Central

Excise, who in turn will forward it to the Assistant Collector of Central Excise after necessary verification and the said practice was followed in this year also. When the application was made to the Assistant Collector, through the Superintendent, in duplicate, it was received without demur. What is more, the assessee was asked to furnish certain details. When such details were furnished, the Superintendent of Central Excise forwarded the refund claim to the Assistant Collector of Asstt. Collector of Central Excise, stating that the claim was received in his office on 3-8-1979 and it was filed within the time limit prescribed and that the assessee is entitled to the refund. The assessee''s counsel argued that the only question that arose for consideration under Rule 11 was whether an application was made for refund of excise duty to the Assistant Collector before the expiry of six months. In this case Annexure B will show that the application for refund was made to the Assistant Collector, though it may be that it was routed though the Superintendent, in consonance with the earlier practice. The fact that there was delay in the forwarding of the application by the Superintendent''s Office cannot visit the assessee with any penal consequences. The application having been made or addressed, to the Assistant Collector, as specified in Rule 11, should have been held to be filed within time. Counsel pressed into service the decision of the Supreme Court in Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s, to plead that in cases where the claim for refund is genuine and valid the plea of limitation comes with ill grace from the Revenue, just to defeat the legitimate claims of the citizens. Referring to the Trade Notice - Annexure D -dated 23-5-1979, which states that the application for refund should be submitted in duplicate and the application should be made to the jurisdictional Assistant Collector, it was argued that the Superintendent of Central Excise consistent with the past practice, entertained the claim for refund, processed it and forwarded it to the Assistant Collector. Thereafter, it is not open to the Revenue to contend that the claim is barred since the Assistant Collector received it beyond the period of six months. Reference was made to the decision of the Appellate Tribunal in 1989 (42) ELT 731 According to counsel, in the context of Rule 11, it will be sufficient if the refund claim is addressed to the Assistant Collector, but presented before the Superintendent of Central Excise. Rule 11 does not require that the application itself should be presented before the Assistant Collector concerned. On the other hand, counsel for the Revenue submitted that the language of Rule 11 of the Central Excise Rules, 1944 behoves the assessee to file the application for refund before the Assistant Collector before the expiry of six months from the date of payment of the duty. It is not sufficient if the claim for refund addressed to the Assistant Collector, is filed before the Superintendent of Central Excise. It should be filed before the Assistant Collector by the assessee within six months.

4. On hearing the rival contentions of the parties, we are of the view that the assessee should succeed. Before evaluating the rival pleas, put forward before us by the parties, we should remind ourselves of the observations of the Supreme

Court, contained in Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s, . The Court said :

"The plea of limitation based on this section is one which the Court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the Court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable."

Annexure B is the application submitted for refund. Admittedly, it is addressed to the Assistant Collector of Central Excise, Kottayam. The Assistant Collector himself admits that the said claim dated 13-7-1979 was filed with the Range Office, Munnar on 3-8-1979. It related to a period from 9-2-1979 to 31-3-1979. It is also evident that the said application was processed, and certified as correct and maintainable, entitling the assessee to refund, as one filed within time by the Superintendent of Central Excise in the communication addressed to the Assistant Collector of Central Excise, dated 21-11-1979 - Annexure E. The accidental fact that the claim reached the Office of the Assistant Collector only on 24-11-1979, cannot visit the assessee with any penal consequences. The only question that arises for consideration is whether in the instant case the application for refund was made to the Assistant Collector before the expiry of six months from the date of payment of duty. It cannot admit of any doubt that the application was made (addressed to the Assistant Collector of Excise); or directed to the Assistant Collector, as is evident from Annexure E, though routed through the Superintendent of Central Excise. It is common ground that the claim for refund was addressed to the Assistant Collector though it was routed or presented through the Superintendent of Central Excise. In a similar case, the Customs, Excise and Gold (Control) Appellate Tribunal, Special Bench ''D'', New Delhi in 1989 (42) ELT 731 stated thus :

"We find that the claim had been preferred on 4-1-1978. (The learned Counsel mentioned that he would not rely on the earlier letter dated 31-12-1977). This claim dated 4-1-1978 was addressed to the Assistant Collector but presented to the Superintendent. Smt. Saxena contends that the Collector''s trade notice 15/72 had made it clear that refund claims were to be presented to the Assistant Collector, specifying the documents that should also accompany the refund claim. Her contention is that since this refund claim dated 4-1-1978 was presented to the Supdt. only and the refund claim finally reached the Assistant Collector on 29-1-1980 only the refund claim must be held to have been presented on

29-1-1980 only and was therefore rightly rejected as barred by time.

5. We find that the Superintendent who had received to rectify various defects pointed out by him in their refund claim and that this correspondence went on till 1980 and it is thereafter that the refund claim was sent to the Assistant Collector on 29-1-1980. This course of conduct of the Superintendent would itself establish that there was a practice that the refund claim though addressed to the Assistant Collector was required to be presented to the Superintendent who was to scrutinise the claims and thereafter submit the same to the Assistant Collector evidently with his remarks etc. We therefore hold that the claim must be held to have been presented to the Assistant Collector on 4-1-1978 when it was handed over to the Superintendent who must have received it on behalf of the Assistant Collector. If so the entire claim was within time under Rule 11 of the Central Excise Rules."

The approach made in the said decision and the conclusion arrived at therein have our full concurrence. The claim for refund should be made to the Assistant Collector. That is all. It need not be presented before the Assistant Collector. It is also evident that consistent with prior practice the application was received by Range Office without demur. It was not returned as defective. The assessee was not directed to present the claim before the Assistant Collector. This is the normal course that should have been adopted, if the claim was not entertainable by the Range Office, though addressed to the Assistant Collector. On the facts of this case, one salient feature is that the order of the Tribunal aforesaid was passed by a Bench, wherein one of the members was the person who rendered the decision in this case as the Appellate Collector. We are satisfied that the conclusion of the Appellate Tribunal (sic) that the claim is barred and is not in accord with Rule 11 of the Central Excise Rules, is erroneous in law and unsustainable.

5. We answer the questions referred to us as follows :

(a). Question No. (1):-

We answer this question in the affirmative. The application for refund has to be made (addressed) to the concerned Assistant Collector. In the present case it was so done.

(b). Question No. (2) :-

We answer the first limb of this question in the affirmative. We answer the second limb in the affirmative in so far as the Revenue held out as in this case that the Superintendent was authorised to receive the application and transmit it to the Assistant Collector, consistent with the previous practice.

(c) Question No. 3(a) & (b) :-

In the light of our answers to questions Nos. 1 and 2, the only relevant question is, when was the application for refund made to the Assistant Collector? It was certainly before the expiry of six months from the date of payment of duty. The fact that the application, addressed to the Assistant Collector, was received in his office on a later date is of no consequence. The date on which the application was presented or submitted to the Superintendent of Central Excise should be taken as the date of receipt of the application by the proper authority, which, admittedly, in this case is within the time allowed by law. It is academic to answer question No. 3(a) & (b), since the practice at present seems to be to file the application directly before the Assistant Collector.

6. The Reference is answered as above.

A copy of this judgment under the seal of this Court and the signature of the Registrar will be forwarded to the Customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench, Madras.

