

(2018) 02 GAU CK 0049
In the Gauhati High Court
Case No : 11 of 2016

VERNERPUR TEA ESTATE

APPELLANT

Vs

COMMISSIONER OF CENTRAL EXCISE SHILLONG

RESPONDENT

Date of Decision : 20-02-2018

Acts Referred:

[Central Excise Act, 1944](#), [Section 11 B](#)

Citation : (2018) 02 GAU CK 0049

Hon'ble Judges : Ajit Singh, Manojit Bhuyan

Bench : Division Bench

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

Judgement

1. This appeal is directed against the order dated 29.2.2016 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata, Eastern

Zonal Bench, (in short "Tribunal") whereby it has dismissed appellant's Excise Appeal No.126/2008.

2. The appeal has been admitted on the following substantial questions of law:-

(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?

3. The appellant is a Tea Estate owned by Cachar Native Joint Stock Company Limited situated at Vernerpur, Hailakandi. As the name suggest,

the appellant is a manufacturer of Tea.

4. 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.

5. The appellant after claiming that its Unit 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 application on 18.5.2005 claiming refund of excise duty paid.

Statements of duty paid for the Unit amounted to Rs.27,09,705/-. On 16.2.2006, the Range Superintendent verified and found that there was

substantial increase of over 25% and sent his report to the Divisional Office. Another verification was conducted by the Deputy Commissioner,

Central and the Superintendent (Technical-I) on 13.5.2006, who too found that there was substantial expansion of more than 25% in the factory.

He was however of the view that since the refund application was filed after a lapse of six years, the same cannot be accepted. He then issued

show cause notice dated 25.7.2006 and vide order dated 8.11.2006 rejected the claim of appellant for refund of duty on the ground of limitation.

6. The appellant challenged the order dated 8.11.2006 by filing appeal before the Commissioner (Appeals) who also dismissed the same vide

order dated 9.10.2007 on the ground that claim for refund of duty paid was belated and hence cannot be allowed. Undeterred the appellant filed

another appeal before the Tribunal which held that statement of duty paid made in RT-12 returns in the absence of specific claim for refund of duty

does not fulfill the conditions of Notification. The Tribunal also held that claim for refund of duty made after six years cannot be accepted. On these

findings, the Tribunal vide order dated 29.2.2016 dismissed the appellant's appeal. It is in this background, the appellant has filed the present

appeal.

7. 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.

8. 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.

9. 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. It is not in dispute that the Industrial Unit has undertaken increase by more than 25%. 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.

10. With these findings, we answer all the substantial questions of law in favour of the appellant. We accordingly set aside the orders dated

8.11.2006, 9.10.2007 and 29.2.2016 passed by the Deputy Commissioner, Commissioner (Appeals) and the Tribunal, respectively and allow the

appeal with cost of Rs.1000/-.