(2016) 01 AHC CK 0132

In the Allahabad High Court

Case No : Central Excise Appeal No. 116 of 2004

V.N. Dyers and Processors APPELLANT

Vs

The Commissioner of Central Excise, Allahabad RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11-B

Citation : (2016) 333 ELT 3 : (2016) 54 GST 144

Hon'ble Judges : Tarun Agarwala and Vinod Kumar Misra, JJ.

Bench : Division Bench

Advocate : A.P. Mathur, for the Appellant; C.S.C. and R.C. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Sri A.P. Mathur, the learned counsel for the appellant and Sri R.C. Shukla, the learned counsel for the department.

2. The present appeal was admitted on the following substantial question of law:-

"Whether the Hon''ble Tribunal is justified in rejecting the refund claim as time barred when the entire Central Excise duty of the refund claim was paid in consequence of an order passed by commissioner provisionally?"

3. The appellant is engaged in the processing of grey fabrics with the aid of Hot Air Stenter. The Commissioner vide order dated 16th of April, 1999 determined the annual capacity of production and monthly duty liability on provisional basis w.e.f. 28.02.1998. The appellant did not file any appeal and deposited the duty. Subsequently, the appellant lodged a protest through their representation dated 13th June, 1999 contending that the length of galleries does not find part of the production system of the Stenter and therefore, such length of galleries could not be included while determining the production capacity. The appellant, accordingly, in its representation requested that the department should re-determine the annual capacity of production after excluding the galleries and

arrive at a correct amount of duty payable. The appellant in the said representation further contended that hence onwards the duty would be paid under protest.

4. It transpires that the annual capacity was re-determined and the contention of the appellant was found to be correct. The department, accordingly refunded the excess duty paid, i.e., from 14th of June, 1999 onwards, i.e., the date when the protest was received in the office of the department. The department, however, refused to refund the excess amount deposited prior to 14th of June, 1999 on the ground that the refund application was filed after the period of limitation. The said order was affirmed by the Tribunal against which, the present appeal has been filed.

5. Section 11-B of the Central Excise Act provides that a person can file an application for refund of duty of excise and interest within six months from the date of making such payment. The first proviso of Section 11-B further indicates that if the amount on duty is paid under protest then the application for refund can be filed even after the period of limitation, which in the instant case was six months.

6. In the instant case, admittedly, the application for refund was filed after the period of six months. The only question that arises for consideration is, whether the appellant deposited the amount under protest or not? The Tribunal and the other departmental authorities have found that a letter of protest was given by the appellant on 14th of June, 1999 in which the applicant contended that the determination of the annual capacity as per order dated 16th April, 1999 was incorrect and that the appellants would henceforth deposit the amount under protest subject to re-determination of the annual capacity. The department has taken this letter as a letter of protest for depositing the duty subsequent to 14th of June, 1999 onwards and has rejected the claim of the appellants for refund of the amount prior to 14th of June, 1999 on the ground that no such request was made by the appellants in this letter of protest.

7. Having heard the learned counsel for the parties, we are of the opinion that the department has taken a stand which is too technical in nature. The sum and substance of the letter of protest has to be read as a whole and not in portion. As per the order of the Tribunal, this letter of protest indicates that the appellant had protested against the determination of its annual capacity as per the order of the Commissioner dated 16th of April 1999. The appellant requested for re-determination of the annual capacity and consequently, the duty payable, and contended that hence onwards the duty would be paid under protest till the annual capacity and duty is re-determined.

8. In our opinion, this letter of protest covers the period prior to 14th of June, 1999. Once the department accepts the contention of the appellant and grants refund for the period subsequent to 14th June, 1999, there was no reason why the refund for the period prior to 14th June, 1999 could not have been given.

9. We, consequently, set aside the order of the Tribunal and other departmental authorities.

10. The appeal is allowed and the substantial question of law is answered in favour of the appellant holding that the appellant is entitled for refund for the period prior to 14th of June, 1999. No order as to costs.