

Collector of Central Excise, Chandigarh

Vs

M/s. Doaba Co-Operative Sugar Mills Ltd., Jalandhar

Civil Appeal No. 283 of 1988

(Sabyasachi Mukharji, S. Ranganathan JJ)

16.08.1988

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. This is a statutory appeal against the decision of the Customs, Excise and Gold (Control) Appellate Tribunal, under Section 35-L(b) of the Central Excise & Salt Act, 1944 (hereinafter called 'the Act').
2. A sum of Rs. 5,60,679,40 was sanctioned to the respondent on the basis of Notification No. 108/78 as an incentive for excess production. On May 18, 1979, the said sum was credited to the Personal Ledger Account of the dealer. On November 5, 1981, the Superintendent of Central Excise issued a show cause notice asking the respondent to show cause as to why the sum of Rs. 66,306.62, granted in excess under the aforesaid notification, be not recovered from it.
3. On July 31, 1982, the Assistant Collector, however, held that there was no excess sanction because of wilful incorrect statement or suppression of facts by the respondent. In the premises, he held that the notice was barred by lapse of time according to the statute and, accordingly, dropped the demand.
4. On October 6, 1982, the Collector of Central Excise, Chandigarh, while exercising his power under Section 35-A(2) of the Act as it stood at the material time, issued a review show cause notice against the order of the Assistant Collector. The case was adjudicated thereafter by the Collector who found that the statutory time limit under Section 11-A of the Act would come into play only where the demand is on account of the central excise duty short levied or not levied or refunded erroneously.
5. Aggrieved thereby, on or about October 9, 1987, the respondent preferred an appeal before the Tribunal. The Tribunal allowed the appeal. The propriety of the said decision is being sought to be challenged in this appeal. It appears that Section 11-A of the Act would come into operation only when the demand is on account of central excise duty short levied or not levied or refunded erroneously. In the instant case the issue was not for any of the said reasons.
6. It appears that where the duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the Act and the Rules framed thereunder have no application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light. 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 Rules framed thereunder must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act. If the proceedings are taken under the Act by the department, the provisions of limitation prescribed in the Act will prevail. It may, however, be open to the department to initiate proceedings in the civil court for recovery of the amount due to the department in case when such a remedy is open on the ground that the money received by the assessee was not in the nature of refund. This was the view taken by the Tribunal in previous decision in the case of *Miles India Ltd. v. Assistant Collector of Customs* (1985 ECR 289 (1) : (1987) 30 ELT 641 (1) (SC)), but it was assailed before this Court. The appeal was withdrawn. This Court observed that the customs authorities, acting under the Act, were justified in disallowing the claim for refund as they were bound by the period of limitation provided therefor in the relevant provisions of the Customs Act, 1962. If really the payment of the duty was under a mistake of law, the party might seek recourse to such alternative remedy as it might be advised. See the observations of this Court in *Miles India Ltd. v. Assistant Collector of Customs*.(1985 ECR 289 (1) : (1987) 30 ELT 641(1)(SC))

7. In the aforesaid view of the matter the Tribunal was right. The appeal, therefore, has no merits and it is accordingly not entertained and dismissed. There is no order as to costs.

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