

SUPREME COURT OF INDIA

Collector of Central Excise

Vs.

Rallis India Ltd.

C.A.No.1346 of 1991

(B.N. Kirpal and D.P. Mohapatra JJ.)

19.07.2000

ORDER

1. The only question involved in this appeal is whether the application for refund which was filed by the respondent before the Excise Authority was within the prescribed period of limitation.

2. Briefly stated, the facts are that the respondent was manufacturing Sodium Hydrosulphite, falling under Tariff Item No. 14AA(1) of the First Schedule to the Central Excise Act, 1944. During the financial year, 1979-80, and particularly in respect of the period from 25th April, 1979 to 29th July, 1979, the respondent had paid duty of excise on about 323.651 metric tonnes.

3. At the end of the financial year, the respondent realised that its production of Sodium Hydrosulphite in the financial year 1979-80, was less than 360 metric tonnes. Relying upon the Notification No. 270/77, dated 20th August, 1977, respondent filed an application for refund of duty which was paid on 150 metric tonnes of Sodium Hydrosulphite. The application for refund was filed on 16th July, 1980. Relevant part of the Notification on which reliance was placed for the refund is reproduced below:

In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby, exempts Sodium Hydrosulphite 'falling under Item No. 14AA of the First Schedule' to the Central Excise and Salt Act, 1944 (1 of 1944), upto a quantity not exceeding one hundred and fifty metric tonnes cleared by or on behalf of a manufacturer for home consumption during any financial year, from the whole of the duty of excise leviable thereon;

Provided that exemption under this Notification shall not be available to a manufacturer whose total production of Sodium Hydrosulphite exceeds three hundred and sixty metric tonnes during the financial year in which clearance is made.

4. The Assistant Collector of Central Excise, Kanpur by order, dated 21st April, 1984 rejected the said application. It was, inter alia, held that the respondent herein, had not paid the duty under protest or provision and the application for refund was barred by time.

5. Appeal was filed by the respondent before the Collector of Customs and Central Excise, New Delhi who by an order, dated 24th July, 1985 allowed the same. He came to the conclusion that the

refund Claim could be filed within six months from the close of the financial year, i.e. , on or before 30th September, 1980.

6. The appellant then filed an appeal before the CEGAT but without success. Hence this appeal.

7. It is submitted by Shri Tandon, learned Counsel for the appellant, that in deciding whether the application for refund was within the period of limitation, what has to be seen is not only the terms of the aforesaid Notification, dated 20th August, 1977 but Rule-11 and Rule 173J which are relevant to the present case and which read as follows:

Amendment: Rule 11 was substituted by Notification No. 31-CE, dated 29.9.1951 and read as under: "No duties or charges which have been paid or have been adjusted in an account-current maintained with the Collector under Rule 9, and of which repayment, wholly or in part, is claimed in consequence of the same having been paid through inadvertence, error or misconstruction, shall be refunded unless the claimant makes an application for such refund under his signature and lodges it with the proper officer within three months from the date of such payment or adjustment, as the case may be.

This Rule was then substituted on 6th August, 1977 by G.S. R., 554(E) and read 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.

Explanation:- Where any duty is paid provisionally under these rules on the basis of the value or the rate of duty, the period of six months shall be computed from the date on which the duty is adjusted after final determination of the value or the rate of duty, as the case may be.

(2) If on receipt of any such application, the Assistant Collector of Central Excise is satisfied that the whole or any part of the duty paid by the application (applicant?) should be refunded to him, he may make an order accordingly.

Where as a result of any order passed in appeal or revision under the Act, refund of any duty becomes due to any person, the proper officer may refund the amount to such person without his having to make any claim in that behalf.

(4) Save as otherwise provided by or under these Rules, no claim for refund of any duty shall be entertained.

Explanation:- For the purposes of this Rule, "refund" includes rebate referred to in Rules 12 and 12A.

173 J. Time limit for recovery of short levy or refund of excess levy - The provisions of Rules 10 and 11 shall apply to the assessee as if for the expression 'three months', the expression 'one year' were substituted in those Rules.

8. Rule 11 provides that if any duty has been paid through inadvertence, error or misconception or the said duty has been adjusted on current account maintained with the Collector, under Rule 9 and there has been an inadvertence, error or misconception, then an application for refund should be lodged with the appropriate officer within three months from the date of such payment or adjustment as the case may be. The said Rule would have no application in the present case because it was not the case of the respondent that any payment or adjustment had been made due to any inadvertence, error or misconception. What is relevant, however, is Rule 173J which inter alia provides that the provisions of Rule 11 will apply in a case where there has been a short levy or levy in excess. In such an event, the period of limitation would be one year and not three months as provided by Rule 11.

9. The finding of fact recorded in the present case is that the payment of excise during the period, 25th April, 1979 to 29th July, 1979, was neither made provisionally nor under protest. The question which arises is as to when the period of limitation began. The submission of Mr. Dave, which found favour with the Collector at New Delhi, was that it is only at the end of the financial year that the respondent could get to know as to what its production was during the financial year and the lodging of claim for refund could only be made thereafter and hence the period of limitation will start only then.

10. There is considerable force in the submission of the learned Counsel that it is possible only as on 31st March, 1980, the last day of the financial year, that the respondent would get to know whether its production had exceeded 360 metric tonnes or not. If the production had not exceeded 360 metric tonnes, then it was entitled to claim a refund of excise duty which had been paid in respect of 150 metric tonnes which had been cleared by it. But the Rule under which application for refund is made does not provide that the period of limitation is to be computed from the end of the financial year.

11. The plain and unambiguous words of Rule 11, read with Rule 173J, are that the period of limitation commences from the date of payment or date of adjustment, in case, there is a current account maintained under Rule 9. It is not as if, in the instant case, the respondent did not have time to file an application for refund. As we have already seen, the period, in respect of which refund is claimed, is 25th April, 1979 to 29th July, 1979. The application for refund could have been made after the conclusion of the financial year by 25th April, 1980. But the respondent had filed the said application only on 16th July, 1980.

12. Shri. Tandon has drawn our attention to a large number of decisions of various High Courts where the view which has been taken is that even where such a notification, dated 20th August, 1977 is applicable, the period of limitation for filing the application for refund would commence under Rule 11, read with Rule 173J, from the date of payment or date of adjustment. A Full Bench of the Tribunal in 96 ELT 257 has referred to these decisions and construed the said provisions accordingly. In our opinion, the view taken therein and by the various High Courts on which reliance was placed is correct. The period of limitation has to be determined with a reference to the language of Rule 11, read with Rule 173J and is not to be influenced by the provisions of the notification, dated 20th August, 1977. The said notification of 20th August, 1977 was a reason for the respondent to apply for refund but the period of limitation, as already noticed, has to be determined as per the terms of the said Rule 11, read with Rule 173J.

13. Before concluding, we observe that a Single Judge of the Andhra Pradesh High Court in 6 ELT

620, has taken a contrary view. It was held in that case that the period of limitation will be taken from the end of the financial year. We, however, find that the learned Judge did not make any reference to terms of Rule 11 and/or Rule 173J under which an application for refund is made. One other decision which may be taken note of is, that of the Bombay High Court in Weikfield Products Company (India) Pvt. Ltd. v. Union of India (1991 (51) ELT 323 (Bom)). In that case the High Court exercised its jurisdiction under Article 226 of the Constitution and ordered the refund of the excess amount of excise duty which had been paid. The High Court did not construe Rule 11 to mean that an application for refund could be filed within three months or one year of the end of the financial year. We need not go into the question as to whether the High Court was right in exercising its jurisdiction under Article 226 in ordering a refund de hors the provisions of Rule 11, but we only note that the said decision can be of no assistance to the respondent in the present case.

14. For the aforesaid reasons, we are of the view that the Collector of Excise as well as the CEGAT erred in coming to the conclusion that the period of limitation would commence from the end of the financial year. The period of limitation, as already noticed by us, would commence under Rule 11, read with Rule 173J from the date of payment and/or from the date of adjustment in case, there is a current account maintained under Rule 9. The appeal is accordingly allowed. There will be no order as to costs.

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15. This appeal is dismissed as having become infructuous.