Samrat International (P) Ltd vs Collector Of Central Excise Hyderabad on 21 September, 1990

Equivalent citations: 1991 AIR 369, 1990 SCR SUPL. (2) 1, AIR 1991 SUPREME COURT 369, (1991) 1 JT 181 (SC), 1992 (1) SCC(SUPP) 293, 1990 CRILR(SC&MP) 667, 1991 (1) JT 181, 1992 SCC (SUPP) 1 293, (1992) 58 ELT 561, (1991) 31 ECC 207, (1991) 33 ECR 19, (1991) 5 CORLA 30, (1991) 43 DLT 351

Author: M. Fathima Beevi

Bench: M. Fathima Beevi

PETITIONER:
SAMRAT INTERNATIONAL (P) LTD.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE HYDERABAD

DATE OF JUDGMENT21/09/1990

BENCH:
FATHIMA BEEVI, M. (J)
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FATHIMA BEEVI, M. (J)
RANGNATHAN, S.

CITATION:
1991 AIR 369 1990 SCR Supl. (2) 1
1992 SCC Supl. (1) 293 JT 1991 (1) 181
1990 SCALE (2)747

ACT:
Central Excises and Salt Act, 1944: Section 11-B Central Excise and Salt Rules, 1944: Rules 173 B, C, CC, D and I--Assessee clearing goods under 'Self Removal' procedure--Application claiming refund of excess duty--Starting point for period of limitation-- What is.

HEADNOTE:
The appellant was manufacturing Hacksaw blades and Bandsaw falling under Tariff Item No. 51-A(iv) of the Central Excise Tariff. On 26.3.1985 they filed a classification

list as per Rule 173 B of the Central Excise Rules, 1944 in respect of their products furnishing the tariff rate of 15% Ad valorem by mistake instead of furnishing the effective rates of duty as per Notification No.85/85 CE dated 17.3.1985. The Assistant Collector of Central Excise approved the classification list on 3.6.1985. On 31.10.1985 the appellant filed a revised classification list with the effective rates of its products with retrospective effect from 26.3.1985 which was also approved by the Assistant Collector of Central Excise. On 30.10.1985 the appellant made an application under section 11B of the Central Excises and Salt Act, 1944 for refund of excise duty claiming that they had paid excess excise duty from 1.4.1985 to 31.8.1985. By its order dated 13.12.1985 the Assistant Collector of Central Excise allowed the claim only partly but rejected the claim for the period from 1.4.1985 to 27.4.1985 on the ground that the claim was barred under section 11B of the Act because the 'relevant date' for preferring the claim for the appellant was the date of payment of duty and the duty had been paid by adjustment in the personal ledger account as and when goods were removed;

The order of the Assistant Collector was confirmed in the appeal by the Collector of Central Excise (Appeals).

Appellant's further appeal to the Customs Excise and Gold (Control) Appellate Tribunal was also unsuccessful.

In appeal to this Court under section 35L of the Central Excises and Salt Act, 1944 it was contended on behalf of the appellant (i) that mere debiting in the personal ledger account should not be taken as the

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starting point for limitation and the, relevant date should be the date on which ART-12 Returns, which were filed on a monthly basis, were assessed: and (ii) that clause (e) of Explanation to Section 11 (B) was applicable to the case.

Allowing the appeal, this Court,

HELD: 1. The scheme for payment of duty of goods under which the appellant was clearing his goods is known as 'self-removal' procedure. There will be no time bar for refund if the duty is paid under protest. The period of 6 months is prescribed in other cases. [6H; 7A]

2. In the instant case, the classification list filed by the appellant for the period 1.4.1985 to 27.4.1985 was not approved till 3.6.85. From provisions of Rules 173B, 173C and 173CC of the Central Excise Rules, 1944 it is clear that clearances can be made only after the approval of the list by the particular officer. However, if there is likely to be delay in accordance with the approval the officer can allow the assessee to avail himself of the procedure prescribed under Rule 9B for provisional assessment of goods. Between 1st April, 1975 when the classification list was filed and 3rd June, 1985 when the list was approved, the assessee was clearing the goods by determining the duty himself and debiting the amount of duty in his personal ledger account.

The amount of duty paid by him was obviously provisional and subject to the result of the final approval by the officer concerned. In these circumstances, the clearance of goods made by the appellant between 1st April and 3rd of June, 1985 were in accordance with the procedure for provisional assessment. In such a situation clause (e) of para (B) of the Explanation under section 11 B will be attracted. The RT-12 Return for the month of April, 1985 was filed on 8.5.1985 and the same was assessed on 29.10.1985. It is, therefore, only from the date of this assessment that time bar in section 11 B will operate. The refund application having been filed on 30th October, 1985 cannot, therefore, said to be time barred. [7B-D; E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4460 Of 1988.

From the Order dated 15.4. 1988 of the Customs Excise and Gold (Control) Appellate Tribunal New Delhi in Appeal No. E/Appeal No. 2225 of 1986-A. V. Sreedharan, V.J. Francis and N.M. Popli for the Appel- lant.

Ashok H. Desai, Solicitor General, Dalip Tandon and P. Parmeshwaran for the Respondent.

The Judgment of the Court was delivered by FATHIMA BEEVI, J. This is an appeal under section 35L of the Central Excises and Salt Act, 1944. The appeal is di- rected against the order dated 15.4.1988 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi. The appellant is the manufacturer of Hacksaw blades and Bandsaw Blades failing under Tariff Item No. 51-A(iv) of the Central Excise Tariff. The appellant filed a classification list as per Rule 173B of the Central Excise Rules 1944 on 26.3.1985 in respect of their products furnishing the tariff rate of 15% Ad valorem by mistake instead of furnishing the effec- tive rates of duty as per Notification No.85/85 CE dated 17.3.1985. The aggregate value of the clearance in the preceding year i.e. 1984-85 did not exceed Rs.75 lakhs. In the case of first clearance upto an aggregate value not exceeding Rs.7.5 lakhs, the effective rates of duty is nil and in the case of next clearance of Rs.7.5 lakhs, the duty is 3.75% Ad valorem. The Assistant Collector of Central Excise, Hyderabad, approved the Tariff rate 15% Ad valorem on 3.6.1985 instead of the above effective rates as the appellant did not claim the exemption as per Notification No.85/85 CE dated 17.3.1985 due to ignorance. A revised classification list with the effective rates in respect of the products with retrospective effect from 26.3.1985 was filed on 31.10.1985. The revised classification list was approved. The appellant claimed that they had paid excess Rs.2,55,172.55 from 1.4.1985 to 31.8.1985 as excise duty. They made an application for refund as per rule under sec- tion 11B of the Central Excises and Salt Act, 1944 on 30.10.1985.

The Assistant Collector of Central Excise by his order dated 13.12.1985 sanctioned the refund claim only partly. For the period from 1.4.1985 to 27.4.1985, the refund claim was rejected on the ground that the same was time barred. The Assistant Collector held that the refund claim for the period

1.4.1985 to 27.4.1985 was time barred for the reason that under section 11B, the 'relevant date' for preferring the claim for a case such as that of the appellant was the date of payment of duty and, according to him, the duty had been paid by adjustment in the personal ledger account as and when goods were removed. The plea of the appellant is that mere debiting in the personal ledger account should not be taken as the starting point for limitation and the relevant date should be the date on which RT-12 Returns which are filed on a monthly basis are as- sessed. The order of the Assistant Collector was confirmed in the appeal by the Collector of Central Excise (Appeals). The further appeal to the Tribunal was also unsuccessful. The question that arises for decision in the appeal is as to the starting point of limitation for filing an appli- cation under section 11B of the Central Excises and Salt Act, 1944. Section 11B so far as it is material reads as under:

> "11B. Claim for refund of duty--(1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months from the relevant date.
>
> Provided that the limitation of six months shall not apply where any duty has been paid under protest. Explanation--For the purposes of this section (B) "relevant date" means,--
>
> (a) to (d) .....
>
> (e) in a case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;
>
> (f) in any other case, the date of payment of duty."

The appellant's contention before the authorities was that the date of assessment would be the date-of payment of duty within the meaning of clause (f) above. We agree with the learned Solicitor General that this argument is not tenable. Where an assessee maintains a personal ledger account, duty is paid by way of debit therein and goes to reduce the amount of deposit paid by the assessee. It is not a mere adjustment entry; it is effective payment. Before us, however, learned counsel for the assessee has raised an alternative contention. According to the appellant it is clause (e) which is applicable in the case whereas the contention of the respondent is that clause (f) is attract- ed. To understand this argument, it is necessary to refer to 'Self-removal' procedure under which the appellant cleared the goods.

Chapter VII-A of the Rules relates to removal of excise goods on determination of duty by producers, manufacturers of private warehouse licensees. Under Rule 173B, every assessee shall file with the Proper Officer for approval a list in prescribed form showing full description of all excisable goods or products manufactured, the rate of duty leviable on such goods and such other particulars as the Collector may direct. The Proper Officer shall, after such enquiry as he deems fit, approve the list with such modifi- cations as are considered necessary and return one copy of the approved list to the assessee who shall unless otherwise directed by the Proper Officer determine the duty payable on the goods intended to be removed in accordance with such list. All clearance shall be made only after

the approval of the list by the Proper Officer. Sub-rule (2-A) of Rule 173B provides as under:

> "(2-A) All clearances shall, subject to the provisions of rule 173CC, be made only after the approval of the list by the proper officer. If the proper officer is of the opinion that on account of any inquiry to be made in the matter or for any other reason to be recorded in writing there is likely to be delay in according the approval, he shall, either on a written request made by the assessee or on his own accord, allow such assessee to avail himself of the procedure prescribed under rule 9B for provisional assess- ment of the goods."

Where the assessee disputes rate of duty approved by the Proper Officer in respect of goods, he may have to give an intimation to that effect to such officer and to pay duty under protest at the rate approved by such officer. When the dispute about the rate of duty has been finalised or for any other reason affecting rates of duty, a modification of the rate or rates of duty is necessitated, the Proper Officer shall make such modification and inform the assessee accord- ingly. Under Rule 173C, the assessee shall file with the Proper Officer a price list in prescribed form. Prior ap- proval of the price list by the Proper Officer is necessary in the specified cases. Here also, sub-rule (5) of rule 173C provides:

> "(5) Subject to the provisions of rule 173CC, an assessee specified in sub-rule (2) shall not clear any goods from a factory, warehouse or other approved place of storage unless the price list has been approved by the proper officer. In case the proper officer is of the opinion that on account of any enquiry to be made in the matter or for any other rea-

sons to be recorded in writing, there is likely to be delay in according approval, he shall either on a written request made by the assessee or of his own accord allow such asses- see to avail himself of the procedure prescribed under rule 9B for provisional assessment of the goods." Under Rule 173CC, assessee may remove goods in certain cases pending approval by the Proper Officer of the classi- fication or price list. Rule 173F provides that where the assessee has complied with the provisions of Rules 173B, 173D, and where applicable 173C, 173CC, he shall himself determine his liability for the duty due on the excisable goods intended to be removed and shall not, except as other- wise expressly provided, remove such goods unless he has paid the duty as determined. Under Rule 173G, every assessee shall keep an account current with the Collector. This rule lays down the procedure which is to be followed by the assessee for payment of duty. According to sub-rule (3) of Rule 173G, within five days after the close of each month every assessee shall file with the Proper Officer a monthly return in the prescribed form showing the quantity of the excisable goods manufactured, duty paid on such quantity and other particulars. The Proper Officer makes an assessment as provided under Rule 1731 on the basis of the information contained in the return and after such further enquiry as he may consider necessary assess the duty due on the goods removed and the assessment is completed. The duty determined and paid by the assessee under Rule 173F shall be adjusted against the duty assessed and where the duty so assessed is more than the duty determined and paid, the assessee shall pay the deficiency by making a debit in the current account within 10 days of the receipt of copy of the return and where such duty is less, the assessee shall take credit in

the account current for the excess.

This is the scheme for the payment of duty for clearance of goods by the manufacturers. This procedure is known as self-removal procedure. There will be no time bar for refund if the duty is paid under protest. The period of 6 months is prescribed in other cases. As we have already seen, section 1 1B says that the period of 6 months "in a case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof". In this case, the classification list filed by the appellant for the period 1.4.1985 to 27.4.1985 was not approved till 3.6.1985. From the provisions of Rules 173B, 173C and 173CC, which we have set out earlier, it will be seen that clearances can be made only after the approval of the list by the particular officer. However, if there is likely to be delay in according the approval the officer can allow the assessee to avail himself of the procedure pre- scribed under Rule 9B for provisional assessment of the goods. In the present case between 1st April, 1975 when the classification list was filed and 3rd June, 1985 when the list was approved, the assessee was clearing the goods by determining the duty himself and debiting the amount of duty in his personal ledger account. The amount of duty paid by him was obviously provisional and subject to the result of the final approval by the officer concerned. This is the procedure prescribed under Rule 9B except for the circum- stance that no bond as provided in Rule 9B is required in a case where the personal ledger account is maintained for the clearance of the goods, since there is always a balance in the account current sufficient to cover the duty that may be demanded on the goods intended to be removed at any time. In these circumstances, the clearances of goods made by the appellant between 1st April and 3rd of June, 1985 were in accordance with the procedure for provisional assessment. In such a situation clause (e) of para (B) of the Explanation under section 11B will be attracted. In this case the RT- 12 Returns for the month of April, 1985 was filed on 8.5.1985 and the same was assessed on 29.10.1985. It is, therefore, only from the date of this assessment that time bar in section 11B will operate. In the present case the refund application had been filed on the 30th of October, 1985. It cannot, therefore, said to be time barred.

We, therefore, accept this contention of the appellant. The appeal has therefore to be allowed holding the appellant is entitled to the full amount and there is no bar of limi- tation as found by the Tribunal. We, therefore, allow the appeal. In the facts and circumstances of the case there will be no order as to costs.

T.N.A. Appeal allowed.