

Customs, Excise and Gold Tribunal - Mumbai

Ctr Manufacturing Industries ... vs Commissioner Of Central Excise, ... on 27 August, 2001

ORDER J.H. Joglekar, Member (T)

1. The facts leading to the present appeal is as follows:-

The refund claim of Rs. 2,22,675.88 was filed by the appellants on 12.7.82 on the ground that certain duty had been paid by them by mistake of law on post manufacturing expenses during the period 1.7.1982 to 30.12.1981. Substantial correspondence were made thereafter. On 29.6.88, the appellants scaled down the quantum to Rs. 61,551/- in response to the department's letter dated 30.6.87 pointing out the law as laid down by the Supreme Court. On 18.7.1989, as against the claim of Rs. 61,551/-, the Asstt. Collector sanctioned refund of Rs. 57,008/-. A corrigendum was issued on 10.8.1989 reducing the refund to Rs. 52,762.36. This was not contested by the assessee. They took credit in their PLA account of this sum on 1.9.89. However, the jurisdictional Commissioner caused an appeal to be filed before the Commissioner (Appeals) in terms of Section 35E(2) of the Central Excise Act, 1944. The Commissioner (Appeals) observed that the refund claim was filed after the statutory period and therefore, was ab initio time barred. On his allowing the department's appeal, the present appeal has been filed.

2. Shri P.K. Viswanathan appearing for the assessee appellant claimed that the appeal before the Commissioner was filed beyond the statutory period. The appeal was directed to be filed on 20.5.90. At the material time, the relevant provision permitted a period of one year during which such appeal was to be filed. This claim of Shri Viswanathan has no merit. Shri Viswanathan accepts that the claim was made beyond six months but submits that at the material time the law was that the duty paid under mistake of law did not suffer from the limitation laid under the Central Excise Act. His argument has no merit. It has been made abundantly clear by the Supreme Court in the judgment of MRF Ltd. that the period stipulated in the relevant law would apply in preference to the general law. Finding no merit in the appeal, the same is dismissed.

(Dictated in Court)