

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2015

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.290 of 2010

M/s Delphi-TVS Diesel Systems Ltd.,
rep.by M.N.Subramaniam
Vice President-Finance and Company Secretary
Mannur, Thodokodukadu Post
Sriperumbudur 602 105 ... Appellant

-vs-

1. Customs, Excise and Service Tax
Appellate Tribunal
Shastri Bhavan Annexe
No.26, Haddows Road
Chennai 600 006
2. Commissioner of Central Excise (Appeals)
Mahatma Gandhi Road
Nungambakkam
Chennai 600 034
3. Deputy Commissioner of Central Excise
Chennai V Division
Chennai II Commissionerate
MHU Complex
Nandanam
Chennai 600 035
4. Commissioner of Central Excise
Chennai II Commissionerate
MHU Complex
Nandanam
Chennai 600 035 ... Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 35-G of the Central Excise Act, 1944 against the Final Order No.333/2009 dated 1.4.2009 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant :: Mr.P.R.Renganath
For Respondents :: Mr.A.P.Srinivas
Senior Panel Counsel for R2 to R4

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

The assessee has come up with the above appeal under Section 35-G of the Central Excise Act, 1944, aggrieved by the rejection of their demand for refund.

2. Heard Mr.P.R.Renganath, learned counsel for the appellant and Mr.A.P.Srinivas, learned Senior Panel Counsel for the respondents 2 to 4.

3. On 9.2.2010, the appeal was admitted on the following substantial questions of law:-

"(1) Whether or not the Tribunal erred in not considering the settled legal position that once duty had been paid for the same goods twice, the payment of duty for the second time will be available as refund, as there is no authority under the Central Excise Act, 1994 to collect duty twice for the same goods?

(2) Whether or not the Tribunal failed to appreciate that Section 11 B of the Act would only prescribe one year from the date of payment of excess duty as the time limit for filing refund and in this view the procedure under rule 173L of Central Excise Rules, 1944 has to be read harmoniously with statutory provisions?

(3) Whether or not the Tribunal erred in not appreciating the fact that D3 intimation filed on 16.04.1999 itself is an application for condonation of delay (in receipt of duty paid goods received for repair and return)?

(4) Whether or not the Tribunal erred in not allowing the refund claim by taking recourse to procedural infraction (Rule 173L) when in substance the refund claim related to the duty paid for the second time for the same goods?"

4. Before we take up the questions of law for consideration, it may be necessary to record certain bare essential facts. They are:-

(a) The appellant which is engaged in the manufacture of fuel injection pumps falling under CSH 8413.80, cleared a particular

quantity of manufactured goods on payment of duty on 30.6.97 under three different invoices. They were cleared for supply to a car manufacturing company by name Paul Peugeot Limited.

(b) Unfortunately, out of 300 numbers of multi cylinder fuel injection pumps sold and delivered by the appellant on 30.6.97, the buyer returned 252 pumps under an invoice dated 22.3.99. The goods were actually received in the factory premises of the appellant on 15.4.99. The return was in terms of Rule 57F(3) of the Central Excise Rules, 1944.

(c) While the duty paid on 300 pumps supplied by the appellant was Rs.5,53,033/-, the duty involved on the returned goods was Rs.4,63,783/-. Therefore the appellant filed D3 intimation on 16.4.99 with the jurisdictional Central Excise Officer.

(d) Thereafter the appellant subjected the fuel injection pumps to a further process of manufacture and supplied them to another company by name M/s TELCO. The sale and supply were made under the invoice dated 11.10.99. After selling the returned goods to a different customer under the invoice dated 11.10.99, the appellant made a refund claim for Rs.4,63,783/- on 14.10.99.

(e) All the three authorities rejected the claim for refund on the basis of Rule 173L of the Central Excise Rules, 1944 contending that the return of goods did not take place within a period of one year from the date of payment of duty. Hence the appellant is before us.

5. The claim for refund made by the appellant was in terms of Section 11B. Under sub-section (1) of Section 11B, any person claiming refund of any duty of excise, should make an application before the expiry of six months from the relevant date in such form and manner as may be prescribed. The expression "relevant date" is explained in Explanation (B). Explanation (B) reads as follows:-

“(B) “relevant date” means,--

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods,--

- (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or
- (ii) if the goods are exported by land, the date on which such goods pass the frontier, or
- (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being

remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;

(ea) in the case of goods, which are exempt from payment of duty by a special order issued under sub-section (2) of section 5A, the date of issue of such order;

(eb) in 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."

6. However, Rule 173L(1) states under proviso (i) that the claim for refund on returned goods may be admitted only if such goods had been returned to the factory within one year of the date of payment of duty or within such further period not exceeding one year in the aggregate. Sub-rule (1) of Rule 173L together with provisos thereunder is reproduced as follows:-

"Rule 173L. Refund of duty on goods returned to factory.-- (1) The Commissioner may grant refund of the duty paid on manufactured excisable goods issued for home consumption from a factory, which are returned to the same or any other factory for being re-made, refined, reconditioned or subjected to any other similar process in the factory:

Provided that -

(i) such goods are returned to the factory within one year of the date of payment of

duty or within such further period or periods not exceeding one year, in the aggregate, as the Commissioner may, on sufficient cause being shown, permit in any particular case;

(ii) the assessee gives information of the re-entry of each consignment of such excisable goods into the factory to the proper officer in writing in the proper form within twenty-four hours of such re-entry or within such further period not exceeding ten days, as the Commissioner may, on sufficient cause being shown, permit in any particular case, to enable the proper officer to verify the particulars of such goods within forty-eight hours of receipt of the information;

(iii) the assessee stores the said goods separately pending their being remade, refined, reconditioned or subjected to any other similar process in the factory unless otherwise permitted by the Commissioner by an order in writing and makes such goods available for inspection by the proper officer when so required;

(iv) the amount of refund payable shall in no case be in excess of the duty payable on such goods after being remade, refined, reconditioned or subjected to any other similar process in the factory:

Provided further that in relation to the declared excisable goods, for clause (ii) of the first proviso, the following clause shall be substituted, namely:-

"(ii) the assessee gives information of the re-entry of each consignment of such excisable goods into the factory to the proper officer in writing in the proper form within twenty-four hours of such re-entry or within such further period not exceeding ten days, as the Commissioner may, on sufficient cause being shown, permit in any particular case."

7. It is seen from proviso (i) of Rule 173L that it prescribes a period of limitation of one year from the date of payment of duty, if the claim for refund is relatable to the return of goods, which are later subjected to a remake, refinement or reconditioning. In the case on hand, there is no dispute on facts that the returned goods were subjected to a further process of reconditioning or remake and they were sold to a different customer. Therefore, the only question that arises is as to whether the period of one year stipulated under the proviso (i) is in conflict with the prescription contained in Section 11B or whether Rule 173L merely aids the implementation of

the prescription under Section 11B with additional conditions.

8. For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, sub-section (1) of Section 11B stipulates a period of limitation of six months only from the relevant date. The expression "relevant date" is also defined in Explanation (B)(b) to mean the date of entry into the factory for the purpose of remake, refinement or reconditioning. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. In other words, the rules can occupy a field that is left unoccupied by the statute. The rules cannot occupy a field that is already occupied by the statute.

9. But, unfortunately, proviso (i) of sub-rule (1) of Rule 173L prescribes the date of commencement of the period of limitation. Though Mr.A.P.Srinivas, learned standing counsel strenuously contended that the apparent conflict between Explanation (B) to Section 11B(1) and the proviso (i) under Rule 173L(1) are not really conflicts but have to go together, we do not agree with the said contention. Once the statute stipulates only one test for determining the date of commencement of the period of limitation, the rules cannot prescribe a different date for the purpose to come and argue that both dates can co-exist together. That is not the manner in which a subordinate legislation can be understood.

10. But we are of the considered view that in this case, we are not even going to such an extent as to hold that there is a conflict and that the Act will have to prevail. There is no dispute on fact that at least within two years, which happens to be the extended period as per proviso (i) of sub-rule (1) of Rule 173L, the appellant has made a claim. As every assessee would like, the appellant is not interested in resolving the conflict between the rules and the statute, but interested only in getting their money back. Therefore, whatever way the department understands, they are liable to refund the money to the appellant.

11. Relying upon the decision of a coordinate Bench in Lakshmi Automatic Loom Works Limited v. Deputy Commissioner of Central Excise, Pollachi, 2014 (309) E.L.T. 400, it was contended by Mr.A.P.Srinivas, learned standing counsel that the prescription contained in the rules should also be satisfied before a claim for refund is made. We have no quarrel with the above proposition. As we have indicated earlier, if the statute prescribes certain conditions, the additional conditions prescribed in the rules which do not encroach upon the prescription contained in the statute can be

enforced. For instance, there are certain other obligations imposed under Rule 173L, which is left unoccupied by the statutory prescription under Section 11B. There is no difficulty in enforcing those provisions. But the only difficulty is with regard to the date of commencement of the period of limitation.

12. As we have indicated earlier, we are not even going so far as to resolve any apparent conflict between Explanation (B) to Section 11B and proviso (i) to Rule 173L. Under the proviso (i) to Rule 173L, the Commissioner is given the discretion to extend the period of one year stipulated therein by a further period not exceeding one more year. In other words, the Commissioner has the power and discretion under proviso (i) to Rule 173L to entertain an application within a total period of two years. This is a case where the Commissioner should have at least exercised the said discretion in favour of the assessee.

13. Therefore, this civil miscellaneous appeal is allowed answering the third question of law in favour of the appellant/assessee. Questions 1, 2 & 4 are not answered. As a consequence of our answering question No.3 in favour of the appellant, the respondents are directed to make a refund within a period of two months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

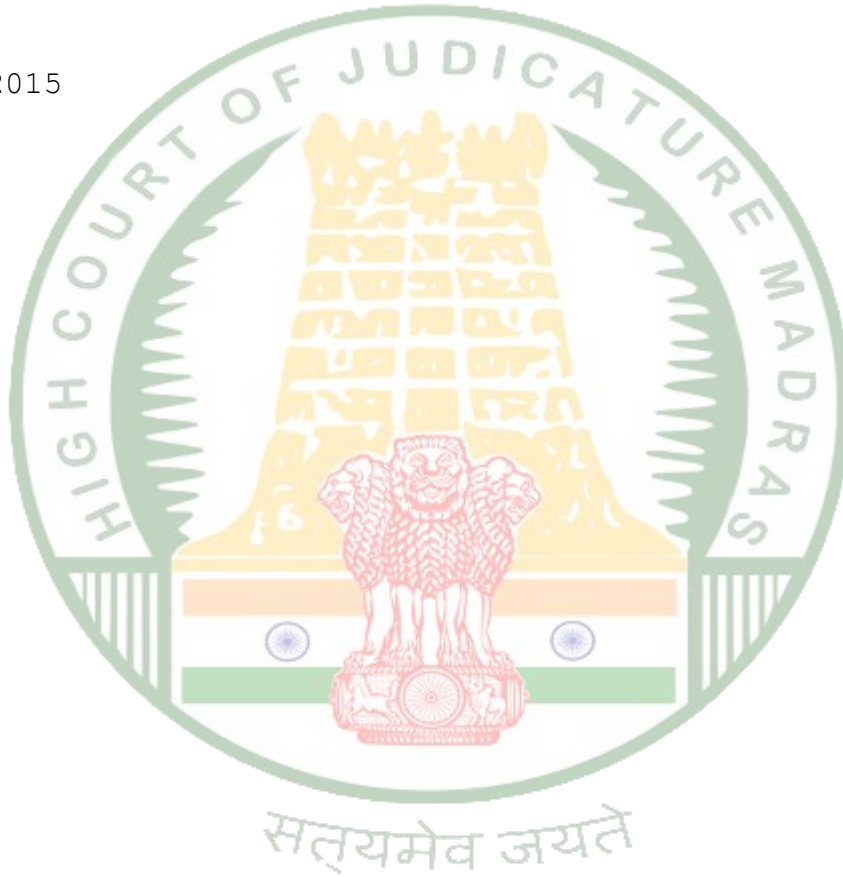
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1 cc to Mr. A.P.Srinivas, Advocate Sr.No.48402
1 cc to Mr.P.R.Renganath , Advocate Sr.No.48457

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