

Collector of Central Excise Vs. Micro Extrusion Corporation

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jul-26-1985

Reported in : (1986)(6)LC104Tri(Chennai)

Appellant : Collector of Central Excise

Respondent : Micro Extrusion Corporation

Judgement :

1. M/s. Micro Extrusion Corporation, Bangalore respondent herein, presented their refund claim, addressed to the jurisdictional Assistant Collector of Central Excise, Bangalore, before the Range Superintendent incharge of their unit on 13.11.1979 for the period 7.5.1979 to 2.11.1979 (i.e. within the time-limit specified in Section 11B of the Central Excises and Salt Act, 1944). The claim papers were forwarded to the jurisdictional Assistant Collector by the Range Superintendent on 27.4.1982. The Assistant Collector by his order C. No.V/27/18/73/82-B.7, dated 30.4.1983 rejected the claim as barred by limitation under Section 11B of the Act as it was received in his office after a lapse of 6 months with reference to the date of payment of duty (Annexure B). Aggrieved by this decision, the party filed an appeal before the Collector of Central Excise (Appeals), Madras, who by his order No. 261/83(B), dated 27.10.1983 allowed the appeal and vacated the impugned order with a direction to examine the claim afresh on merits by the lower authority (Annexure C). The decision of the Collector (Appeals) was upheld by the South Regional Bench of the Tribunal, Madras vide its order No. ED(MAS)76/84, dated 12th February, 1986 (Annexure A) on an appeal filed by the Department against the said order of the Collector (Appeals), Madras.

2. The applicants have filed an application under Section 35G of the Central Excises and Salt Act, 1944 for referring the following question said to be of law and arising from the Order of the Tribunal : "Whether the refund application addressed to the Assistant Collector of Central Excise but presented to the Range Superintendent, within 6 months which was later forwarded to the jurisdictional Assistant Collector after the lapse of 6 months is to be treated as a valid claim under Section 11B of the Central Excise Act?" 3- We have heard both sides. As a result of discussion, it has been decided that the following mixed question of fact and law be referred to the Hon'ble High Court of Karnataka at Bangalore and is accordingly referred : "Whether in the circumstances of the case, a refund application addressed to the Assistant Collector of Central Excise but received by the Superintendent can be treated as having been made in conformity with the provisions of Section 11B of the Central Excises and Salt Act,