

Commissioner of Central Excise, Vs. H.C.L. Infosystems

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-17-2002

Reported in : (2002)(141)ELT485TriDel

Judge : P Bajaj, B T K.K.

Appellant : Commissioner of Central Excise,

Respondent : H.C.L. Infosystems

Judgement :

1. The brief facts in this case are that during the course of investigation, it was found that the respondents were charging extra amount over and above the assessable value declared by them and no duty was paid on such extra realisation. Accordingly, they were issued a show cause notice by the Commissioner of Central Excise, Meerut demanding the duty of Rs. 3,82,18,326/- on such extra realization and a duty of Rs. 1,01,31,035/- on account of incorrect determination of the assessable value of the goods cleared on stock transfer during the period from January, 92 to December, 93. Consequent to this show cause notice, the Commissioner of Central Excise, Meerut vide his Order dated 24-5-96 appropriated an amount of Rs. 1.25 crores already paid/debited by the party and further imposed a penalty of Rs. 75 lakhs on them.

2. The party filed an appeal before the CEGAT and the CEGAT vide its Stay Order dated 29-11-96 directed the party to make a pre-deposit of Rs. 75 lakhs. The party deposited a sum of Rs. 75 lakhs on 28-1-97. As such they deposited a total

amount of Rs. 2 crores up to 28-1-97. The appeal of the party was disposed of vide CEGAT Final Order dated 4-3-99 in which the matter was remanded to the Commissioner for de-novo consideration. The party filed a refund claim of Rs. 2 crores deposited earlier by them. The claim is disposed of by the Dy. Commissioner of Central Excise Division-I, NOIDA vide his Order dated 4-7-2000. The Dy.

Commissioner has sanctioned a refund of Rs. 75 lakhs to the respondents. The party filed an appeal and the Commissioner (Appeals), Ghaziabad vide his order dated 23-4-2001 has held as follows : "In view of the above, the refund claim of the appellant is allowed and the amount refunded should be allowed, as requested, to be credited to their Pondicherry Unit as per the law in force".

3. The Revenue are in appeal against the impugned order of the Commissioner (Appeals). We have heard Shri D.N. Choudhary, JDR for the appellants. The respondents are not represented despite the notice sent to them by the Registry of the CEGAT on 18-12-2001 which is duly delivered. There is no communication from them either requesting for an adjournment or giving reasons for their absence. It is observed from the record that on two earlier occasions also the respondents did not appear despite the notice of hearing. Accordingly, we proceed to dispose of the revenue appeal on the basis of the facts on record. The following contention is raised in the written memorandum of appeal: "There are no provisions in the Central Excise Law whereby Commissioner (Appeals), while allowing the appeal filed by the party may grant relief by way of himself sanctioning the refund claim and allowing the party to take credit either in PLA or CENVAT account.

If the Commissioner (Appeals) came to the conclusion that the appeal of the assessee should be allowed, he could have done and granted relief to the party by issuing proper directions to the refund sanctioning authority i.e. the Dy. Commissioner/Asst.

Commissioner of Central Excise to allow the refund claim as per procedure prescribed under Section 11B. Central Excise Law envisages taking of credit in PLA or CENVAT account by an assessee on the basis of certain rules and

procedures as laid down under the Central Excise Rules, 1944. No credit can be taken by an assessee either in PLA or in CENVAT account on the basis of the directions of the Commissioner (Appeals). Therefore, directions of the Commissioner (Appeals) in the said Order-in-Appeal authorizing taking of credit by the assessee himself in relation to accounts of another unit located in Pondicherry are incorrect, improper and legally untenable".

4. We have considered the above submissions. We find force in them. The Commissioner (Appeals) in his impugned order has not mentioned the amount of the refund allowed by him nor has he given the reasons for allowing the same. He has also not mentioned as to under which provisions of law he has directed the amount of refund to be credited to the account of the Pondicherry Unit of the party - over which he has no jurisdiction. The impugned order of the Commissioner (Appeals) is therefore non-speaking, without application of mind and in violation of the principles of law and natural justice. The same is accordingly set aside and the matter remanded to him for passing a de nova speaking order as per the provisions of law.

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