Bajaj Auto Ltd. Vs. Commissioner of C. Ex. and Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-04-2003

Reported in : (2003)(158)ELT217Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Bajaj Auto Ltd.

Respondent : Commissioner of C. Ex. and Cus.

Judgement :

1. The appeal is against the order of the Commissioner (Appeals) confirming the action of the Assistant Commissioner sanctioning to the appellant a refund of Rs. 10 lakhs and ordering adjustment of this amount towards an amount due of Rs. 76.50 lakhs which he finds is due to be payable by the appellant.

2. The counsel for the appellant relies upon the judgment of the Bombay High Court in Suvidhe Ltd. v. Union of India - 1996 (82) E.L.T. 177 and the judgment of the Madhya Pradesh High Court in National Steel Industries Ltd. v. Union of India - 2001 (134) E.L.T. 616 in support of his proposition that the amount of Rs. 10 lakhs which was deposited pursuant to a stay order of the Tribunal in an appeal which the appellant finally won should have been refunded to it, and should not have adjusted against any other amount due. We do not find anything in the judgment in Suvidhe Ltd. v. Union of India - 1996 (82) E.L.T. 177 or the other judgment to support the proposition that merely because the amount in question was deposited pending appeal it should not be adjusted. All that Suvidhe Ltd. v. Union of India -

1996 (82) E.L.T.177 says is that it is disentitled to be refunded when applying the provisions contained in Sub-section (2) of Section 11B of the Act relating to the shifting of the incidence of duty. In National Steel Industries Ltd. v. Union of India - 2001 (134) E.L.T. 616 a learned single Judge of the Madhya Pradesh High Court has said that adjustment of an amount otherwise due as refund towards payment of a sum which was in dispute by the assessee having filed an appeal, was not proper. We asked the counsel for the appellant to show evidence that a sum of Rs. 76 lakhs was the subject of an appeal where recovery has been stayed, but he expressed his inability to do so. Section 11 of the Act empowers the officer in this regard to deduct any amount payable to the assessee from any money owing to the person from whom such sum may be recovered.

It may be in his hands or under his disposal or control. The action of the Assistant Commissioner in invoking this section towards adjustment of this amount therefore cannot be found fault with.