

Cce Vs. Shreyans Ind. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-17-2003

Reported in : (2003)(157)ELT293TriDel

Judge : P Bajaj

Appellant : Cce

Respondent : Shreyans Ind. Ltd.

Judgement :

2. In this appeal, the Revenue has questioned the validity of the impugned Order-in -Appeal dated 21.3.2002 vide which the Commissioner (Appeals) has reversed the Order-in-Original and allowed credit of the disputed amount to the respondents.

3. The facts are not much in dispute. the respondents deposited Rs.2,42,637/- against confirmed vide Order-in-Original dated 28.4.998.

However, that order was set aside by the Tribunal and the case was remanded. the respondents took credit of that amount and utilised the same. He was served with show cause notice fore the recovery of the amount on the ground that suo moto, they could not do so. the adjudicating authority confirmed the demand through the Order-in-Original dated 6.3.2002. The Commissioner (Appeals) set aside the order by observing as under:- " I have carefully perused the case record.The Adjudicating Authority forfeited the facility of payment of duty in

instalments; by treating the credit of Rs.2,42,637/- taken suo moto by the appellant, as default in payment of duty for the 2nd fortnight of Dec.2001. Credit so taken was treated as irregular. I note that neither any show cause notice was issued nor any opportunity of personal hearing was granted to the appellant. I, further, observe that they were rightly eligible to take and utilize credit in the light of the judgement cited supra. Applying ratio of these judgements, I hold that credit was admissible to the appellant even if they had not filed any refund claim and the Adjudicating Authority erred in denying the facility of fortnightly to them.

Accordingly, I set aside the order of the Adjudicating Authority." 4. None has come present on behalf of the respondents. I have heard the learned JDR and gone through the record.

5. From the resume of facts narrated above, the impugned order of the Commissioner (Appeals) cannot be, in any manner, said to be illegal.

Without issuing the show cause notice and without affording an opportunity of hearing to the respondents, no recovery of the amount could be ordered to be made from them. The respondents were within their right to utilize that amount after taking the credit. They were not required to file refund application in view of the law laid down by the Tribunal in the case of the Bharat Foam Udyog Ltd. vs. CCE New Delhi, 2001 (44) RLT 613, wherein it has been observed that in case of pre-deposit, the assessee can take the credit of the amount pre-deposited by him after informing the department and that he is not required to move formal application of refund of that amount.

6. Consequently, the impugned order of the Commissioner (Appeals) being perfectly valid and in accordance with law, does not require any interference and the same is upheld. The appeal of the Revenue is dismissed .

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