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Commissioner of Central Excise Vs. Babu Textile Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-08-2003

Reported in : (2003)(158)ELT215Tri(Mum.)bai

Judge : A T V.K.

Appellant : Commissioner of Central Excise

Respondent : Babu Textile Industries

Judgement :
In this Appeal, Revenue is challenging the Order-in-Appeal No. 474/2000 dated 13/06/2002 by which the Commissioner (Appeals) has remanded the matter to the Adjudicating Authority for verifying the contention of the Appellant, M/s. Babu Textile Industries.

2. When the matter was called, no one was present on behalf of the Respondents nor was there any request for adjournment in spite of notice. I also observe that no one was present on behalf of the Respondent when the appeal was posted for hearing on 21/05/2003. I, therefore, heard Shri H. Kothikar, S.D.R. and perused the records.

3. The Respondents had claimed refund of Central Excise duty pursuant to Order-in-Appeal No. 1063/99 dated 30/06/1999 by which the appeal filed by them was allowed by the Commissioner (Appeals). The Assistant Commissioner has sanctioned the refund of Rs. 5,395/- but directed the Respondents to take the

credit in their RG 23A - Part-II as the duty was initially paid by them by debiting the Modvat Credit Account. On appeal the Commissioner (Appeals) found that the Appellants are out of Central Excise Control, being a S.S.I. unit. He, has, therefore, remanded the matter to the Adjudicating Authority "to verify the contention of the appellants as above, and, if the same is found correct, the refund may be allowed in cash forthwith." 4. The learned S.D.R. has submitted that as the payment of duty initially was paid out of Modvat Credit Account, any refund has to be given by allowing credit entry into RG23A Part-II. Account only; that there is no provision for sanction of such amount in cash.

5. I have considered the submissions of the learned S.D.R. and perused the records. It is not disputed by the Revenue that the Respondents are now not paying duty as they are availing exemption from payment of duty, being a S.S.I. Unit. In such circumstances, they may not be maintaining any RG 23A - Part-II Register in which credit of refund amount can be made. The Commissioner (Appeals) has remanded the matter to verify the factual position. I, therefore, find no infirmity in the impugned order and accordingly reject the appeal.

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