Emmellen Biotech Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-19-2003

Reported in : (2004)(163)ELT172Tri(Mum.)bai

Judge : S T Gowri

Appellant : Emmellen Biotech

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant, engaged in the manufacture of pharmaceutical products, took in April and May 2000 the credit under Rule 57Q of the entire duty paid on pipes and pipe fittings brought into its factory.

Sub-rule (2) of Rule 57AC prohibited the manufacturer from taking as credit more than half of the duty paid on the capital goods in the financial year in which the goods were received, deferring taking of credit of the remaining amount to subsequent financial year. The appellant realising its mistake reversed in September 2000 half of the credit that it had earlier taken and also advised the department of its action. This resulted in issue of notice to the appellant proposing recovery of the credit wrongly taken and penalty under rule 173A and recovered interest under Rule 11AA. The Deputy Commissioner confirmed the liability to credit but off set the reversal made by the appellant, imposed a penalty and demanded interest under Section 11AA. On appeal from this order, the Commissioner (Appeals) set aside the penalty but otherwise declined to interfere.

Hence this appeal.

3. The question to be decided is whether, where a person who has reversed credit that was wrongly taken by him before issue of notice is required to pay interest on credit in terms of Section 11AA read with Section 57AH. Rule 57AH provides that the provisions of Sections 11A, 11AA and 11AB of the Act would apply muttatis mutandis for recovery of credit that has been taken wrongly and interest on that credit.

4. Section 11A would apply where a person "chargeable with duty determined under Sub-section (2) of Section 11A fails to pay the duty within three months from that date of such determination." We are not concerned here in this appeal with the proviso under that section. The determination of duty under Sub-section (2) of Section 11A is made by the central excise officers when he decides upon the notice that is issued to any person under Sub-section (1) of that section demanding duty short levied or short paid or refunded which has been erroneously made. Therefore, for Section 11A to apply, following requirements must be fulfilled, (i) duty must have been non paid or short paid or short levied or erroneously refunded, (ii) a notice under Sub-section (1) of Section 11A must be issued for recovery of such duty, (iii) A determination must be made in under Section 11A (2) by the central excise officer of the duty due from a person to whom the notice was issued, (iv) The person must fail to pay the duty within three months from the date of such determination.

5. In the case before me none of these requirements is satisfied. The credit wrongly taken was repaid within eight months before the issue of notice. Even if the appellant has not done so, debiting the wrong credit on its own, and only paid it after notice was issued and adjudicated, bat if so within three months of determination of duty, it is still not required to pay the interest. The payment of interest in the present case therefore does not arise.