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Padmini Polymers Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-09-2003

Reported in : (2004)(92)ECC389

Judge : A T V.K., P Chacko

Appellant : Padmini Polymers Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. These two appeals, filed by M/s. Padmini Polymers Ltd. and the Revenue, are arising out of the same Order-in-Appeal No. 68/2003, dated 17-2-2003 passed by the Commissioner (Appeals).

2. Briefly stated, the facts are that M/s. Padmini Polymers are having manufacturing units at Sahibabad and Patparganj with the registered office at Okhla Industrial Estate Phase-II, New Delhi. The officers of the Directorate General of Anti-Evasion searched their manufacturing units and other offices on 7-10-97. During the course of investigation, M/s. Padmini Polymers Ltd. deposited Rs. 50 lakhs in Punjab National Bank, Okhla Industrial Estate Phase-II, New Delhi; that subsequently, a show cause notice, demanding duty of Rs. 7,69,90,751/-, was issued to them which was dropped by the Commissioner (Adjudication), Delhi as far as the demand of duty was concerned. Subsequently, the assessee filed a refund claim for Rs. 50 lakhs with the Deputy Commissioner, Division-II, Ghaziabad, within whose jurisdiction, their Sahibabad unit falls. The Deputy

Commissioner, in the Memorandum dated 30-4-02, rejected their refund claim on the grounds that the amount was not deposited in the jurisdiction of Ghaziabad Division as the address of the assessee on TR-6 challans was of their registered office at New Delhi; the name of the collecting Bank and focal point bank has been shown of Delhi and not of Meerut Commissionerate and their letter dated 29-12-97, addressed to the Chief Accounts Officer, Delhi informing him to treat the said deposit in their account under Meerut Commissionerate, is no proof that the amount has been transferred to Meerut from Delhi. The Commissioner (Appeals), however, in the impugned order, has held that as they had not been found liable for payment of duty by the Commissioner (Adjudication), they are entitled for refund of duty; that as per provisions of Rule 173S of the Central Excise Rules, 1944, the refund claim has to be filed before the jurisdictional Deputy Commissioner, Incharge of the factory; that there is no provision under the Central Excise Act or Rules that the refund claim should be filed only before the Deputy Commissioner, within whose jurisdiction the bank where the deposit was made, is located. The Commissioner (Appeals) also observed that it is entirely an administrative matter to decide which bank will collect the duty and which bank will act as focal point bank. He, therefore, did not find any logic in rejecting the refund claim on the ground that the deposit was made in Delhi and not in a bank under the jurisdiction of Meerut Commissionerate. Against this finding of the Commissioner (Appeals), the Revenue has come in appeal before us.

3. The Commissioner (Appeals), however, in the impugned order, did not allow the interest to the assessee under Section 11BB of the Central Excise Act holding that the interest on delayed refund occurs only if any duty ordered to be refunded under Section 11B(2) has not been paid within three months after such valid refund order and as no refund order has been passed, claim of refund is not acceptable. M/s. Padmini Polymers have come in appeal against disallowance of interest.

4. We heard Mrs. Charul Baranwal, learned SDR in respect of appeal filed by the Revenue against the sanction of refund by the Commissioner (Appeals) and Shri C. Harishankar, learned Advocate for M/s. Padmini Polymers.

5. The learned SDR has emphasised the fact that the amount of Rs. 50 lakhs was deposited in Punjab National Bank at Delhi by mentioning the code of Delhi Collectorate; that the name of the focal point bank, mentioned in TR-6 challan, was of Punjab National Bank, E.C.E. House, New Delhi; that the said amount had not so far been transferred to the focal point bank, Punjab National Bank, E.K. Road, Meerut, which is evident from the letter dated 2-7-2003 of Pay and Accounts Officer, Central Excise, Meerut; that since the amount was deposited in Delhi Commissionerate, which has separate Account Head, the refund claim is not admissible in Meerut Commissionerate. Shri C. Harishankar, learned Advocate, on the other hand, submitted that the Department has not disputed the deposit of Rs. 50 lakhs by M/s. Padmini Polymers; that the letter dated 5-2-2003 of A.C.A.O., Delhi-I addressed to the Chief Accounts Officer, Meerut, produced by the learned SDR at the time of hearing before the Tribunal today, clearly shows that Rs. 50 lakhs were deposited by them; that as there is no duty liability on them, on account of searches conducted by the officers of the Directorate General of Anti-Evasion, the amount is required to be refunded to them; that the place of depositing the amount or the fact that the amount was deposited by the registered office of the assessee, should not come in the way of sanctioning the refund amount deposited during the course of investigation.

6. We have considered the submissions of both the sides. Section 11B of the Central Excise Act clearly provides that any person claiming the refund of duty of excise, may make an application for refund of such duty to the Assistant/Deputy Commissioner of Central Excise before the expiry of six months from the relevant date in such form and manner as may be prescribed. It is not in dispute that M/s. Padmini Polymers have filed their refund claim in the prescribed form as per the provisions of Rule 173S of the Central Excise Rules, which has not been disputed by the Revenue that Rs. 50 lakhs were deposited by them. This fact has been confirmed by the Assistant Chief Accounts Officer of Delhi-I, in his letter dated 5-2-03 addressed to the Chief Accounts Officer of Central Excise Commissionerate, Meerut, wherein he mentioned that "this office verified the deposit challans at the mentioned address from Punjab National Bank, Okhla Industrial Estate Branch, New Delhi." In view of this position, the Department cannot deny the refund claim merely on the ground that the amount was deposited in a Bank in Delhi and not in

a Bank at Meerut. The duty amount, whether it is deposited in Kashmir or Kanya Kumari, goes to the Consolidated Fund of India. A refund of any duty will also take place from the said Fund only. We observe that the learned Commissioner (Appeals), has dealt with the entire aspect in details in the impugned order and we are in agreement with his findings that the refund cannot be rejected on the ground that the payment was made by the registered office at Delhi and not by the factory at Ghaziabad. We, therefore, uphold the refund of Rs. 50 lakhs to M/s. Padmini Polymers. Accordingly, Appeal No. E/787/03-NB(C), filed by the Revenue, is rejected.

7. In respect of appeal filed by M/s. Padmini Polymers for interest, we have heard Shri C. Harishankar, learned Advocate and Shri V. Valte, learned SDR for the Revenue. The learned Advocate mentioned that the provisions of Section 11B of the Central Excise Act very clearly provide that if any duty, ordered to be refunded under Sub-section (2) of Section 11B to any applicant, is not refunded within three months from the date of receipt of his application, interest has to be paid to the applicant on such duty from the date immediately after the expiry of three months from the date of receipt of application till the date of refund of duty; that the refund claim was filed on 1-11-2000 before the Deputy Commissioner, Ghaziabad and the interest is payable to them after three months from the date of claiming the refund till the date of refund. He referred to Board's Circular No. 130/41/95-CX., dated 30-5-95, wherein it has been clarified by the Ministry that with the enactment of the Finance Act, 1995, the Department has become liable to pay interest at the prescribed rate in case of various types of refund which are not processed within three months from the date of the receipt of refund application under Section 11BB of the Act till the date of refund of such duty. He, further, submitted that the same clarification has been issued, once again, by the Board vide Circular No. 398/31/98-CX., dated 2-6-98; that the Board observed considerable delay in disposal of refund of duty/rebate claims; that in the said circular, it was mentioned that the provisions have been made in the Central Excise Act to grant interest if the refund claim is not sanctioned within three months from the date of receipt of the application. The Board, therefore, directed the officers that it is absolutely necessary that the refund claims should be disposed of within three months.

8. Countering the arguments, Shri V. Valte, learned SDR, submitted that the interest provisions are applicable only if any duty ordered to be refunded under Sub-section (2) of Section 11B, is in existence; that in the present matter, the Deputy Commissioner has rejected the refund claim and as such there was no order in existence for sanction of the refund claim; that such an order for refund of the duty came into existence only with the passing of the impugned order by the Commissioner (Appeals); that in view of this, interest will not be payable after the expiry of three months from the date of filing of the refund claim.

9. We have considered the submissions of both the sides. It is not in dispute that the refund claim has not been sanctioned to M/s. Padmini Polymers within three months of their filing the refund application.

The refund has been initially rejected by the Dy. Commissioner, which has subsequently been sanctioned by the Commissioner (Appeals) in the impugned order. The appeal, filed by the Revenue against the sanctioning of refund by the Commissioner (Appeals), has just been rejected by us. The phrase "if any duty ordered to be refunded under Sub-section (2) of Section 11B to any applicant", will cover the sanction of the refund by any authority, either the original authority, to whom the refund claim was filed with, or the Appellate Authority.

Once, the duty is ordered to be refunded, the time-limit for payment of interest is computed from the date of receipt of the application under Sub-section (1) of Section 11B of the Act. It is immaterial for the purpose of interest that the refund was found to be payable to the applicant by the Appellate Authority. This intention of making the payment of interest, in case of delay in sanctioning the same, is apparent from both the Circulars dated 30-5-95 and 2-6-98, relied upon by the learned Advocate. In the first circular dated 30-5-95, which has been issued immediately after insertion of Section 11BB in the Central Excise Act by Finance Act 1995 w.e.f. 26-5-95, the Government has clarified as under : "With the enactment of the Finance Act, the Department has become liable to pay interest at the prescribed rate in case of various types of refund which are not processed within three months from the date of receipt of refund application under Section 11BB of the Central Excises and Salt Act, 1944, till the date of refund of such

duty." 10. As the Board found that there is considerable delay in disposal of refund/rebate claims, it reiterated the provisions under Section 11BB in Circular dated 2-6-98 by mentioning that the provisions have been made in the Central Excise Act to grant interest if the refund claim, is not sanctioned within three months from the date of receipt of the application. Accordingly, M/s. Padmini Polymers are entitled to the interest under Section 11BB of the Central Excise Act after three months from the date of filing of refund claim till the date of refund.

Accordingly, the Appeal No. E/894/2003-NB(C), filed by M/s. Padmini Polymers, is allowed.

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