

Commissioner of Central Excise Vs. Annapurna Plastopack Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-01-2004

Reported in : (2004)(167)ELT529Tri(Mum.)bai

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Annapurna Plastopack Pvt. Ltd.

Judgement :

1. The revenue's appeal is directed against the order of the Ld.

Commissioner (Appeals). The respondents were sanctioned refund of Rs. 701219/- in RG23 A part II. The request for interest was declined by saying that the provision of payment of interest under Section 11BB of the Central Excise and Salt Act, 1944 are not attracted since it is not a cash refund and the refund is through adjustment in modvat credit only. Against the order rejecting the claim for interest, the respondent approached the Commissioner (Appeals), who held as under: "The of the appellants is covered by explanation given under Section 11BB which says that where any order of refund is made by Commissioner (Appeals) against an order of the Assistant Commissioner of Central Excise under Sub-section (2) of Section 11B, the Order passed by the Commissioner (Appeals) shall be deemed to be an order passed under the said Sub-section (2) for the purpose of this section. Accordingly, in the present case, the Commissioner (A) has set aside the order confirming demand which was already paid by the appellants and

the appellants became entitled for refund consequence of the Commissioner order. Therefore the appellants are entitled for interest, since the refund application has been filed before the introduction of this section i.e.26.5.95, the provisions of this section would be applicable after expiry of three months from this date i.e.26.8.95 and the appellants are eligible for interest as admissible under the law from 26.8.95." 2. Against this finding, the revenue appeal mainly claims that the refundability of the amount itself is in dispute, the matter being remanded by the High Court in SCA No. 8454/92 to the AC, and the Hon'ble High Court in SCA 3327/93 passed an order dated 28.4.1993 and directed the AC to adjudicate afresh that the petitioner are entitled to modvat benefits and as per the direction of the Hon'ble High Court, the Asst. Commissioner correctly adjudicated the case after giving the modvat benefit. Therefore it is claimed in revenue's appeal that when the refund under Section 11B is not permissible to the assessee, the question of payment of interest under Section 11BB does not arise.

3. The submissions in the appeal are without any basis. If the department is of the view that the basic amount of refund was not admissible, then the correct course was to challenge the refund order before the competent authority. Having not challenged this order, the said order granting refund becomes final. In the circumstances, what remains is the fact that such a refund was granted after the expiry of interest free period of three months as held by the Ld. Commissioner.

Consequence of such a delay is that the department is liable to pay interest under Section 11BB. During the hearing, the Ld. DR strenuously argued that the liability to pay interest can arise only in the case of refund of duty and not the refund of modvat credit, and hence Section 11BB will not apply.

4. Firstly, the said grounds are not even pleaded in the revenue's appeal. Secondly, on going through the provision of Section 11B it is clearly mentioned in Clause (c) of the proviso to Section 11B(2), that "refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made ..." are not subject to the clause of unjust enrichment.

5. From this provision of Section 11B(2) of the Act, it is very clear that Section 11B not only covers the refund of duty but also the refund of modvat credit. It is

immaterial whether such payment is received by the appellant in cash or refunded by credit to the modvat account. As the provisions of Section 11BB are applicable to all refunds sanctioned under Section 11B of the Act, the refund of modvat amount is governed thereunder.

6. In these circumstances, I find no merit in the revenue's appeal and the same is rejected.

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