Commissioner of Central Excise Vs. Cosmic Dyes and Intermediate Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-08-2004

Reported in : (2004)(169)ELT209Tri(Mum.)bai

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Cosmic Dyes and Intermediate Ltd.

Judgement :

1. The revenue's appeal is directed against the order in appeal passed by the Ld. Commissioner (Appeals). The Commissioner(Appeals) had set aside the Order in Original and allowed the appeal of the appellants.

In the appeal, the appellants requested for refund claim of Rs. 1,00,571/- as a consequential relief arising out of Order in Appeal 406 to 416/97 dated 7.7.1997. The adjudicating authority vide the order impugned had rejected the said refund on the grounds that initial demand was confirmed by the AC for Rs. 100571/- against the appellants and at that time 2 refunds for Rs. 47000/- and Rs. 26964/- were sanctioned to the appellants which were adjusted against the demand for Rs. 100571/- and the balance Rs. 26,607/-was debited by the appellant vide RG23A part II on 31.1.1997. The adjudicating authority held that the appellants have not filed any protest against the adjustment of refund claim towards demand, therefore that part of refund is time barred. As regard balance of Rs. 26,607/- it was held that, in RG23A part II, the appellants have not shown that the duty is debited under protest they have not followed the procedure under Rule 233B of the Central Excise Rule, 1944 and therefore this refund was time barred.

2. The Ld. Commissioner held that, the refund claim of Rs. 100571/- in the proceedings before him, related to a consequential relief arising out of the order passed by the Commissioned Appeals) and it is a well settled legal position that the provision of Section 11B of the Central Excise Act are not applicable to the refund arising as a consequential benefit out of the orders passed by the appellate forum.

4. Heard both sides. I find that the grounds in revenue's appeal are similar to the ones recorded in the order of the adjudicating authority.

5. It is seen that the refund claim of Rs. 1,00,571/- is wrongly correlated with the refund amount sanctioned earlier and adjusted against the demand of Rs. 100571/-. It has to be understood that the previous refund amounts of Rs. 47000/- and 26964/- were the old claim which were sanctioned and adjusted against the demand. So that transaction related to the recovery of the demand raised on the appellant for the amount of Rs. 100571/-. That was closed chapter and it had no linkage with the claim which arose as a result of the Order in Appeal No. 406 to 416/97 dated 7.7.1997. Before the issue of the said Order in Appeal dt. 7.7.1997, there existed no legal grounds for appellants to claim the refund of the said amount. The department cannot say that the said amount was not paid, since the refund sanctioning authority himself had affected the recovery of the said payment by appropriating 2 refund claims and coercing the appellants to debit the balance. In these circumstances, the authorities ought to have suo moto granted the refund.

6. Accordingly, the revenue's appeal is devoid of any merit and the same is rejected and the order passed by the Commissioned Appeals) is affirmed.