Commr. of C. Ex. Vs. Upper India Steel Mfg. and Engg.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-11-2004

Reported in : (2004)(167)ELT311TriDel

Judge : P Bajaj

Appellant : Commr. of C. Ex.

Respondent : Upper India Steel Mfg. and Engg.

Judgement :

1. In this appeal, the Revenue has made challenge to the impugned order-in-appeal vide which the Commissioner (Appeals) has affirmed the order-in-original of the Assistant Commissioner allowing the transfer of unutilised credit to the respondents from account RG 23 to their account in RG 23A.2. The learned SDR has contended that the Assistant Commissioner had no power to adjudicate on the request of the respondents for transfer of unutilised Modvat credit lying with them in their account RG 23 to their account RG 23A during the year 1986. Therefore, the Commissioner (Appeals) has wrongly affirmed the order-in-original of the Assistant Commissioner and as such impugned order passed by him deserves to be set aside. But in my view, this contention of the learned SDR cannot be accepted for two reasons; firstly, that the case was remanded by the Tribunal to the Assistant Commissioner for examining the request of the respondents regarding transfer of unutilised Modvat credilt from one account to another detailed above. Therefore, he was bound to decide the matter as per the direction of the Tribunal. No correction or modification of the remand order of the Tribunal in this

regard was sought by the Revenue at any stage.

3. Secondly, at the time of adjudication by the Assistant Commissioner, Rule 57H under which initially the Commissioner was competent to decide the request of an assessee for transfer of unutilised Modvat credit lying in account RG 23 to the account in RG 23A, stood amended by Notification No. 8/93-C.E. (N.T.), dated 2-11-93 vide which the power was conferred on the Assistant Commissioner. Therefore, the Assistant Commissioner was competent to decide the matter. On merits, no illegality in the impugned order has been pointed out vide which the Commissioner (Appeals) has affirmed the order-in-original allowing the respondents request for transfer of unutilised Modvat credit from account RG 23 to RG 23A. Therefore, the impugned order is upheld. The appeal of the Revenue is dismissed.