Commissioner of Central Excise Vs. Light Publication Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-01-2004

Reported in : (2004)(171)ELT408Tri(Mum.)bai

Judge : A Wadhwa

Appellant : Commissioner of Central Excise

Respondent : Light Publication Ltd.

Judgement :

1. Being aggrieved with the order passed by the Commissioner (Appeals) vide which he has allowed the respondents claim of interest, the revenue has filed the present appeal.

2. The brief facts of the case are that the Asst. Commissioner originally rejected the refund claim of respondent, in part. On an appeal against the same order, Commissioner (Appeals) confirmed the rejection. Thereafter an appeal was filed before the Tribunal and the Tribunal vide its Order No. 392/96-C dated 25.5.96 allowed the refund claim filed on 18.6.86 for the period from 12.01.85 to 07.05.86 by holding that during the said period assessment was provisional and the refund claim is to be treated as having been filed in time. In terms of the said order of the Tribunal, Asst. Commissioner granted refund on 12.12.96. Thereafter the appellant filed a claim of Rs. 22.438.60 under Section 11BB of the Central Excise Act, 1944 towards interest for the period from 26.5.95 to 31.3.97. The said refund claim was rejected by the Asst. Commissioner on the ground that the appellant filed the

refund claim on 19.9.96, after the receipt of Tribunal order and the same was sanctioned on 19.12.96 i.e. within a period of three months as such no interest accrues to the respondent.

3. The said order was challenged before the Commissioner who observed that in terms of explanation given under Section 11BB the assessee is entitled to the interest from the date of expiry of three months of enactment of Section 11BB. Accordingly he held that inasmuch as Section 11BB came into force only on 26.5.95, the respondents thereby is entitled to interest on the expiry of three months from the said date i.e. from 26.8.95 to 19.12.96, when the refund was originally granted to them. The said order of the Commissioner (Appeals) impugned before me.

4. The only ground in the appeal of the revenue is that prior to the introduction of amendment of Section 11B of Central Excise Act, an assessee was not required to file a formal refund application where the refund has arisen on account of the order passed in appeals. However, after the amendment provision of suo moto refund was done away with it.

As such the assessee who has become eligible for refund by virtue of an appellate order, is required to file a claim of refund.

5. I do not find much force in the above contention of the revenue.

Explanation to the Section 11BB is to the effect that where any order of refund was made by Appellate Tribunal etc. against an order of Asst Commissioner of Central Excise under Sub-section (2) of Section 11B, the order passed by the Tribunal, as the case may be, shall be deemed to be an order passed under said Sub-section (2) for the purpose Of the interest. As such the order of the Tribunal passed on 25.5.96 is deemed to be an order passed on refund application under the provisions of Section 2 of Section 11B in respect of refund application rejected by Asst. Commissioner. In which case in terms of Proviso to the Sub-section 2 of Section 11A the interest would become applicable on expiry of three months period from the date of enactment of Section 11BB. As such. I do not find any infirmity in view adopted by the Commissioner (Appeals). Accordingly I, reject the appeal filed by the revenue.