Commissioner of Central Excise Vs. Rama Multitech Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-07-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Rama Multitech Ltd.

Judgement :

2. The assessee availed exemption and was visited by a team of Preventive Officers, who found that certain credits availed were not as per law and raised objections. The assessee therefore reversed the following amounts on 10.10.96 Rs. 12284904, on 11.10.1996 Rs. 4466004/-. However, no Show Cause Notice was issued and the assessee on being advised that the reversal made were far in excess of the requirements of law sought refund of the amounts which were got reversed after the visit of the officers. Claims for refund amounting to Rs. 1,31,29,199/- after considering the amounts which the assessee availed was the credit required to be reversed were filed. The same was rejected on the grounds: i) claim of refund is premature since investigation and an offence case registered is pending against the assessee.

ii) Refund of credit was not contemplated under Section 11B of the Act.

3. On an appeal filed by the assessee, the Commissioner (Appeals) set aside the order of the lower authority and directed a refund of Rs. 9759872/-and Rs. 3,36,932/- totalling to Rs. 131229193/-. Hence this appeal by the Revenue on the

grounds: ii) Reliance in case of Chandrapur Magnet Wires relied upon by the Commissioner (Appeals) is not relevant to the facts herein.

4. Considering that this Tribunal in the case of Florida Electrical Industries Ltd. v CCE, Delhi 2004 (168) ELT 393 (Tri-Del) has held that refund of amount deposited during the investigation when officers visited premises and alleged removal of excisable goods without payment of duty though Show Cause Notice issued and personal hearing conducted by adjudicating authority, no duty liability determined even after lapse of more than 30 months - Revenue not entitled to retain amount deposited by assessee. Following this decision of the Tribunal, nothing contrary having shown, we would also find no grounds in Revenue's appeal filed now, more so when the refunds have already been sanctioned and paid, as submitted by the Ld Advocate for the respondents.