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Vvf Limited Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-20-2004

Reported in : (2004)(174)ELT237Tri(Mum.)bai

Judge : A M Moheb

Appellant : Vvf Limited

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant was clearing an intermediate product, viz. fatty acid, on payment of duty to his sister concern and the latter was taking modvat credit of duty paid on the fatty acid and used it in the manufacture of final dutiable products. By notification 45/00-CE(NT) dated 30.6.2000, it was laid down that in such cases, the assessable value of the goods (goods cleared for captive consumption) would be 115% of the cost of production. The appellant was not aware of this notification and continued to clear the intermediate product on payment of duty as earlier. On receipt of a letter from the Range Superintendent that the assessable value should be calculated in accordance with notification 45/00, the appellant recomputed the assessable value and paid differential duty of Rs. 13,14,888/- and intimated the Range Superintendent accordingly. Later, the Range Superintendent if formed the appellant that interest was payable by him under Section 11AA or Section 11AB as well. Thereafter, a show cause notice was issued asking the appellant to explain as to why the duty paid should not be confirmed interest and penalty should not be imposed. The original authority confirmed the duty demanded and

interest, and imposed a penalty of Rs. 5,000/-. In appeal, the Commissioner (Appeals) confirmed the order of the lower authority.

Hence this appeal.

3. The issue to be decided is whether interest either under Section 11AA or Section 11AB can be demanded in a case where duty is not determined under Section 11A(2). The Commissioner (Appeals)'s contention that interest under Section 11AA and/or Section 11AB is leviable in all cases is not in accordance with the judicial pronouncements. It is a settled legal position that when duty is discharged even before a show cause notice is issued, interest under Section 11AB cannot be demanded. In regard to penalty, it is observed that the appellant has paid up the differential duty, the moment it is pointed out to him that the assessable value has to be computed in terms of the notification cited supra. I, therefore, see no reason as to why any penalty should have been imposed on the appellant. The appeal is allowed insofar as the demand for interest and imposition of penalty are concerned. The demand for differential duty is, however, confirmed. Penalty and interest is set aside.

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