

**Commissioner of Central Excise Vs. Hari Vishnu Packaging Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Nov-25-2004

**Reported in :** (2005)(180)ELT396Tri(Mum.)bai

**Judge :** A Wadhwa

**Appellant :** Commissioner of Central Excise

**Respondent :** Hari Vishnu Packaging Ltd.

**Judgement :**

1. After hearing both the sides, it is seen that the order was passed by Commissioner of Central Excise, Nagpur in de novo proceedings where in redemption fine was imposed as Rs. 60,000/-. Inasmuch as in the first round of litigation, the redemption fine was higher, the appellant claimed the refund of the balance amount of fine earlier deposited by them. The same was sanctioned by the Assistant Commissioner vide his impugned order. The revenue filed, an appeal against the said order before Commissioner (Appeal), who rejected the same. Hence the present appeal.

2. The Revenue's contention is that the refund of redemption fine is not Central Excise duty and as such is not covered by provision of 11B of the act. They have also contended that CEGAT while remanding the matter back to the Commissioner has not ordered for refund of redemption fine. As such the appellants contend that the redemption fine deposited on the higher side in the first round of litigation should not have been refunded to them by the authorities

below.

3. I do not find any merits in the above contentions of the revenue. If the fine is not duty covered by provision of Section 11B, as contended by the revenue. I fail to understand as to what is the bar in that case in refunding the same. Admittedly, the redemption fine has been reduced in de novo proceedings and appellant becomes entitled to refund of the higher amount deposited by them earlier. No specific orders are required by the Tribunal inasmuch as the order of the higher Appellate Forum is always with consequential relief flowing from the said order.

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