

Commissioner of C. Ex. Vs. D.C.M. Precision Engineering

Commissioner of C. Ex. Vs. D.C.M. Precision Engineering

SooperKanoon Citation : sooperkanoon.com/37988

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-07-2005

Reported in : (2005)(184)ELT43TriDel

Judge : S Kang, Vice-, M T K.C.

Appellant : Commissioner of C. Ex.

Respondent : D.C.M. Precision Engineering

Judgement :

1. Heard both sides. The Revenue filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals).

2. Brief facts of the case are that the appellant filed a refund claim in pursuance to the final order passed by the Tribunal vide Final Order No. 445/02-B dt. 1-10-2002 [2003 (151) E.L.T. 65 (T)]. The Tribunal in the final order confirmed the demand for the period Aug., 1997 to 9-11-1997 and in respect of the remaining period the demand was set aside. At the time of hearing of the appeal, the appellant deposited the amount of Rs. 5 lakhs as pre-deposit. The appellant claimed the refund of above mentioned amount. The refund was sanctioned after deducting the amount of duty for the period Aug., 1997 to 9-11-1997 and amount of Rs. 1,00,299/- was also deducted as interest for late payment of duty. An amount of Rs. 50,185/- was also deducted from the refund claim in respect of the other demand. The appellant filed an appeal before the Commissioner (Appeals) and the Commissioner (Appeals) in the impugned order set aside the adjudication

order in respect of the interest charged i.e. Rs. 1,00,299/- and also held that present respondents are entitled for the interest from the date of the final order passed by the Tribunal.

3. The contention of the Revenue is that the respondents are liable to pay interest even in the SCN, the present respondents were put to notice regarding charging of interest on the duty payable. The contention of the revenue is also that the Tribunal in the final order No. 445/02 nowhere held that the present respondents are not liable to pay interest in respect of the confirmed demand. The contention of revenue is also that deducting the interest on the amount of refund will be from the date of the final order passed by the Tribunal is also not sustainable. The provision of Section 11BB provides the interest is to be paid after three months from the passing of the order by the Tribunal.

4. The contention of the respondent is that no interest is chargeable in respect of the confirmed demand. The provisions of Section 11AB are applicable in the case of misdeclaration, suppression. In the present case, there was no allegation of such allegation.

5. In this case the dispute is in respect of interest for the period August '97 to 9-11-1997 regarding which the demand was confirmed. The interest was demanded in the SCN. The Tribunal in the final order dated 3-10-2002 where the demand was under challenge held that the applicants were liable to pay duty for the period Aug '97 to 9-11-1997 and set aside the demand in respect of the remaining period. The charging of interest in respect of duty payable was before the Tribunal at that time and Tribunal had not held that Revenue is not entitled to charge interest in respect of duty which was paid late. Therefore, we find merit in the arguments of revenue that in view of the earlier order of the Tribunal, appellants are liable to pay interest in respect of the demand confirmed.

6. In respect of the finding of the Commissioner (Appeals) that interest on the amount refunded from the date of the order of the Tribunal is also not sustainable. In view of the statutory provisions of Section 11BB of Central Excise Act where it has been specifically provided that interest is payable if the refund amount is not paid within a period of three months from the date of the order. Therefore, this

portion of the impugned order is also modified to the extent that the respondents are entitled for refund after three months from the date of the final order passed by the Tribunal. In respect of the demand of Rs. 50,185/-which was adjusted from this refund, the respondent submitted that subsequently this amount was refunded to the respondent. The appeal is disposed of as indicated above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com