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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-05-2005

Judge : S T S.S., T Anjaneyulu

Appellant : Koparan Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Appellant is an assessee under the Central Excise Act availing Modvat Credit. The demand of Rs. 85,05,958/- imposing penalty of Rs. 10 lakhs along with interest under Section 11AA. On the grounds that consequent to the order in appeal filed by the assesee, the assessee has taken credit of Rs. 85,05,958/- on their own. This act was considered to be a gross mis-demeanour on part of the assessee.

Therefore the consequential duty demand, penalty and interest were arrived at by the department. Hence this appeal.

2. After hearing both sides and considering the issue it is found that their were four cases, totalling to a credit of Rs. 85,05,958/- which were held to be not eligible. Therefore the assessee filed appeals against these orders of ineligibility. The Commissioner(Appeal) remanded three cases out of the four for denovo consideration and allowed the appeal in one case. Consequently, the assessee suo motto took the credit of the amount in all these four cases that resulted in the proceeding now impugned.

3. It is well settled that debit in the RG23A registers amount to a deposit made to meet the requirement under Section 35F of the Central Excise Act see Morarjee Brembana Ltd. v. CCE 2003 (157) ELT 657. It is equally settled law that pre-deposit effected would need no refund application. In this connection the reliance placed by the appellant on Delhi High Court decision in case of Voltas Ltd 1998 (112) ELT 34 Delhi is well founded. The board also vide an order No. 275/37/2000/CX 8A dated 2.1.2002 have also confirmed this position. A formal application for refund was not required in case of deposits made under Section 35F.A simple application was sufficient. The assessee herein has made such applications. Therefore reversal of credit by the debit entry in this case cannot be impugned. In that view of the matter the order cannot be sustained.

4. Viewed from another angle, in as much as if duty deposits under Section 35F are not permissible from Modvat account, then the original debit i.e. reversals effected were not correct permissible manner of keeping the account under Central Excise Rules. The Central Excise Rules & the principles & practice of Accounting require such incorrect impermissible entries of debit to be corrected only by a cross credit entry. It was always permissible for an assessee to maintaining the credit accounts to correct an entry made in the books. Such reversal entry when effected by an assessee, cannot be impugned.

5. In view of the finding, we find no merits in the present order impugned before us, and we cannot upheld the same. The said order is therefore to be set aside and this appeal allowed.

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