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Mamata Brampton Engineering Ltd. Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-12-2005

Reported in : (2005)(186)ELT483TriDel

Judge : S Kang, Vice-

Appellant : Mamata Brampton Engineering Ltd.

Respondent : Commr. of C. Ex.

Judgement :

2. The appellant filed this appeal against the order-in-appeal whereby the refund application was rejected on the ground that the appellant surrendered registration in November 2000, therefore, the refund is not admissible.

3. The contention of the appellants is that they were paying duty on fortnightly basis. The appellant on 13-10-2000 paid duty of Rs. 1,24,218/- from the Cenvat credit along with other duty from the balance of their Modvat credit whereas this amount of Rs. 1,24,218/- was to be paid through PLA. The appellant shifted their unit from Range-VI to Range-IV of the same Commissionerate and surrendered the registration in Range VI and obtained the new registration from Range-IV. At this stage, the appellant detected the mistake committed by them in respect of the payment of duty from their credit. They paid the duty of Rs. 1,24,218/- along with interest. On 6-1-2001 thereafter filed a refund in respect of the duty paid in October 2000 from Modvat account that to the extent of Rs. 1,24,218/-.

5. The contention of the appellant is that the refund cannot be denied on the ground that they had surrendered the registration. In fact the same unit was working in Range-IV of the same Commissionerate and this unit has paid duty through PLA on realizing the mistake, therefore, they are entitled for the refund. The appellant also submitted that they are not asking for cash refund but they are asking only reversal of the credit to the extent that they had paid wrongly in October 2000 which was subsequently paid through PLA on 6-1-2001.

6. The contention of the Revenue is that the Commissioner (Appeals) in the impugned order only rejected the refund on the ground that unit is closed and registration is surrendered, therefore, the cash refund is not admissible.

7. In the present case the appellant is not asking for cash refund.

They are only filed a refund claim in respect of the duty paid in the month of October 2000 in their Cenvat credit, which was also subsequently paid to PLA. The appellant shifted their unit from Range-VI to Range-IV of the same Commissionerate and is working under the same name and under the same ownership in Range-IV of the same Commissionerate. The appellant paid duty to PLA on 6-1-2001 when they were working in Range-IV. Therefore, it cannot be said that they had surrendered the registration and they are not working. In these circumstances, as the appellants are working in the same range, therefore, the impugned order saying that the registration is surrendered and appellants are not entitled for refund in cash is not sustainable and set aside and the matter is remanded to the adjudicating authority to decide afresh after affording an opportunity of hearing to the appellant. The appeal is disposed of by way of remand.

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