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Lakshmi Cement Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-06-2005

Judge : S Kang, Vice, N T C.N.B.

Appellant : Lakshmi Cement

Respondent : C.C.E.

Judgement :

1. Heard both sides. The assessee filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals). In this case, the Modvat credit was disallowed in respect of the explosives used in the mines.

2. Both sides submit that the issue is settled by the Supreme Court in the case of C.C.E., Jaipur v. J.K. Udaipur Udyog Limited . We find that the Hon'ble Supreme Court in this case held that credit in respect of explosives which are used outside the factory is not admissible under Rule 57AB and in view of the above decision of the Supreme Court we find no infirmity in the impugned order whereby demand is confirmed in respect of the explosives which are used outside the factory. The only contention of the appellant is that the Tribunal held that the assessee is entitled to such credit and on an appeal filed by revenue, Hon'ble Supreme Court reversed that finding, hence the appellants are not liable to pay any penalty. In view of the submission made by the appellants, we find that the issue regarding the availability of modvat credit in respect of the explosives used outside the factory is settled by the Hon'ble Supreme Court on the appeal filed by Revenue by setting aside the decision of the Tribunal, therefore, the penalty of Rs. 50,000/- imposed

on the appellants on this ground is set aside.

3. Revenue also filed an appeal against the same impugned order. The contention of the revenue is that the assesses are liable to pay interest under Section 11AA of the Central Excise Act in lieu of Section 11AB. We find that Commissioner (Appeals) in the impugned order held that in the Show-cause Notice there was no demand of interest from the assessee in terms of Section 11AB of the Central Excise Act, therefore, the order passed by the adjudicating authority demanding interest under Section 11AB is beyond the scope of the Show-cause Notice. In these circumstances, the Commissioner (Appeals) set aside the adjudication order, in respect of interest. This finding is not challenged in the appeal filed by revenue. The only prayer in the appeal is that the interest should be under Section 11AA in lieu of Section 11AB of the Act. Further, we find that the Hon'ble Supreme Court in the case of Commissioner of Trade Tax, Lucknow v. Kanhai Ram Thekedar held that interest liability under the statute accrues automatically, separate written notice is not required for its recovery if it is not included in assessment order. In view of this decision of the Hon'ble Supreme Court, the Revenue is at liberty to recover the interest in accordance with the law. The appeals are disposed of as indicated above.

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