

Abhishek Industries Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-02-2005

Reported in : (2005)(190)ELT399TriDel

Judge : N T C.N.B., M Ravindran

Appellant : Abhishek Industries Ltd.

Respondent : Commissioner of Central Excise

Judgement :

2. The demand has been made in the present case on the ground that Appellants had been erroneously refunded Additional Excise Duty (AED TTA) paid on inputs used in the production of exported items. The contention of the representative of the Company is that AED also is eligible for credit and the lower authorities are not justified in holding that credit was not due to them. The Appellant relied upon the clarification dated 9-2-2004 of the Board, i.e. F. No. 267/11/2003-CX.8 in this regard. It is also pointed out that during the pendency of the present stay application, lower authorities made recoveries by adjustment in the Appellants' rebate claims in respect of other reports. A further point was also made that the Appellant has already made debit of the amount from their RG 23A account.

3. Learned Senior Departmental Representative submits that AED (TTA) is not attracted on the finished products in terms of Rule 5 of CENVAT Credit Rules and refund is not available to the Appellant.

4. Prima facie it would appear that Appellant's claim is well founded.

Exported goods are relieved of duties of excise payable on them and duties of excise leviable on inputs going into their manufacture. In the present case, the appeal is in respect of AED paid on inputs. Since the exported goods are to be given relief from all taxes, relief was required to be given in this regard to this duty also. This position remains clarified in Board's letter dated 9-2-2004. Thus, requirement of pre-deposit is required to be waived and recovery stayed. We do so.

5. It is quite disturbing that even as the stay application was pending before the Tribunal, the Revenue authorities have resorted to coercive methods to recover the amount from the Appellants by making adjustments in their rebate claims in regard to other exports. Clearly, this is not permissible. It is well settled [Rama Vision Ltd. v. CCE, Meerut -] that during the appeal period or during the pendency of the stay application before the Tribunal, Revenue authorities shall not make any recovery towards the demands made in the impugned orders.

In view of this, it is directed that any amount recovered from the appellant pursuant to the order impugned herein shall be restored to them forthwith. The stay application is allowed in the above terms.

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