

Commr. of Cus. and C. Ex. Vs. Bombay Burmah Trading Corpn. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-02-2005

Reported in : (2005)(190)ELT40TriDel

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

Appellant : Commr. of Cus. and C. Ex.

Respondent : Bombay Burmah Trading Corpn. Ltd.

Judgement :

1. The applicant seeks condonation of delay of 15 days in filing the appeal. The same is allowed.
2. The appeal is directed against an order allowing cash refund (not Modvat credit) to the appellants. The facts leading to the dispute are that vide Order dated 25-11-2004 the Asstt. Commissioner allowed the refund claim of the appellant, amounting to about Rupees 12.5 lakhs.

While effecting payment, the authorities paid an amount of Rs. 25,000/- by cheque and the remaining amount as credit to Modvat/Cenvat credit account. The Appellants challenged that order on the ground that they had already ceased to function, the factory is closed and Central Excise registration returned. It was, therefore, submitted that there is no Modvat /Cenvat credit account for the amount to be credited and they sought refund of the amount ordered to be credited also as cash refund. This application of the Appellants was allowed by the Commissioner.

The present Appeal is directed against that order.

3. The contention taken in the Appeal is that the Commissioner's direction to effect payment of refund by cheque/cash is contrary to law. Ground '2' of the Appeal mentions that since the assessee had initially paid the duty amount from Modvat/Cenvat account, the refund also, can be made to only that account. It is contended that there is no provision in law to grant refund in cash in respect of duty paid from the Modvat account.

4. Learned Departmental Representative has placed before us the decision of this Tribunal in the case of Smithkline Beechem Consumer Healthcare Ltd. v. CCE, Bangalore, 2001 (127) E.L.T. 64 and Rollatainers Ltd. v. CCE, Jaipur, in support of Revenue's contention. The learned Counsel for the Appellant contends that Section 11B of the Act, under which the refund has been sanctioned, contains no bar against payment of refund amounts by cheque/cash in cases where original payment of duty was from the Modvat/Cenvat account. He also cited decisions of this Tribunal in the case of CCE, Ahmedabad-I v. Arcoy Industries, and CCE, Ahmedabad v. Omkar Textiles, 2002 (148) E.L.T. 461 in support of his contention.

5. The refund application was under Section 11B of the Central Excise Act. That Section contains no bar as contended by the Revenue. Further, since the present Respondent has ceased to exist as a manufacturing unit and it has no Cenvat account into which refund can be credited, in effect, the order of the original Authority denied the refund to the respondents. This Tribunals' aforesaid decision in the case of CCE, Ahmedabad-I v. Arcoy Industries and CCE, Ahmedabad v. Omkar Textiles support the payment of refund in cash/cheque to the Appellant.

6. In the above factual and legal situation, we find no merit in the Appeal of the Revenue. Appeal is rejected.

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