

Commissioner of Central Excise Vs. Chhabi Electricals Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-30-2005

Reported in : (2006)(193)ELT355Tri(Mum.)bai

Judge : A Wadhwa

Appellant : Commissioner of Central Excise

Respondent : Chhabi Electricals Pvt. Ltd.

Judgement :

1. Being aggrieved with the order passed by Commissioner (Appeals) granting respondent's claim of interest on the refunded amount, revenue has filed the present appeal. I have heard Id. DR. Nobody is present for the respondent and have made a prayer to decide on merits.

2. As per facts on record, respondent assessee was having two units i.e. unit No. I & II and was availing Modvat facility in both the units. However, credit accumulated in Unit No. I was utilised for payment of duty while making clearances from Unit No. II. During the period 9-6-96 to 18-7-96 total, of credit of Rs. 2,97,824 pertaining to Unit No. I was utilised by Unit No. II. On being pointed out by revenue that such inter-use of Modvat credit was not in accordance with law, duty was debited from PLA and refund of credit used for payment through RG 23A Part II was claimed. The said claim was made on 26-11-96 and was sanctioned by the Assistant Commissioner on 8-1-97. Accordingly respondent took credit in their Modvat account.

3. The dispute in the present appeal relates to grant of interest on the said refund, which has been allowed by the appellate authority in terms of provisions of Section 11BB. Revenue has challenged the said order on two grounds First, that the order of refund itself has not been accepted and an appeal there against has been filed before Commissioner (Appeals). Secondly that the refund to plant I was in the nature of regularization of credit which could be done only after adjudication of show cause notice issued for recovery of duty from PLA. Such adjudication took place on 15-9-97 for plant I and on 18-12-97 for plant II. Thereafter refund claim was settled on 8-1-98 and as such question of interest does not arise.

4. As regards the first ground, it is seen that the appeal filed by the department against the refund order stand rejected by Commissioner (Appeals) vide his order dated 29-6-2004. As regards the second ground, I fully agree with the department that refund could be sanctioned only after decision on the liability of unit II to pay duty out of PLA. In any case and in any view of the matter, I find that during the period relevant for the purposes of this appeal, Unit No. II was required to clear the goods on payment of duty out of PLA. Instead they used the credit availed and lying with Unit No. I. Had they not used the said credit the same would have been simply lying unutilised in the Modvat account of the said unit and would not have earned any interest.

Alternatively, unit No. I would have utilised the same for its own clearances. However, it is not the assessee (Unit No. I) case that during the said period they have paid duty out of PLA instead of utilising the credit. In fact, it is not a case of refund of any duty paid, but is a case simplicitor of regularizing the irregular transfer and utilisation of credit and crediting the earlier wrongly made debit entry in RG 23A part II. The same have been allowed to be corrected on duty having been paid subsequently from PLA. Such correction of entered in Modvat account in my views, would not earn any interest.

5. Viewed from another angle, Section 11BB provides for payment of interest on refund of duty (emphasis provided.) Modvat credit is not duty as observed by the Hon'ble Supreme Court in the case of Raghuvar India As such, it can be safely concluded that such adjustment of credit will not be covered by the provisions of

Section 11BB for grant of interest.

6. After having concluded that interest is not to be paid. I may observe in the passing that by not paying duty out of PLA at the relevant time, assessee has deprived the exchequer of its legitimate dues. Duty has been paid from PLA only subsequently. It is not clear as to whether any interest was demanded and paid on the said delayed deposit of duty from PLA. If no interest was paid on the subsequent payment of duty it is not understood as to how the assessee can claim interest on the credited amount of Modvat, which if not utilised by the second unit, would have remained in the records, as such, without earning any interest.

7. In view of the foregoing discussions, I set aside the impugned order as being unsustainable and allow the revenue's appeal.

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