Raghuvar (India) Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-06-2005

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

Appellant : Raghuvar (India) Ltd.

Respondent : Cce

Judgement :

2. The appellant filed this appeal against the order-in-appeal whereby refund application was rejected.

3. The brief facts of the case are that the appellants were working under the Modvat Scheme and were taking credit in respect of duty paid on inputs, which are used in the manufacture of goods which were cleared on payment of duty. By Notification No. 16/96-CE dated 23.7.96, the final product manufactured by the appellant were exempted from payment of Central Excise duty. A show-cause notice was issued to the appellant for reversal of credit availed on the inputs which are lying in stock, contained in the goods under process and in the finished product lying in stock on 23.7.96 on the date the final product becomes exempted. In the show-cause notice, it was specifically mentioned that the appellants are liable to pay amount of Rs. 9,53,165/- by way of reversal of credit on the inputs which are lying stock, contained in the goods under process and in the final product lying in stock. On that date the credit of Rs. 1,90,726/- was in the balance of their RG-23A Part-II which was treated as lapsed and demand of remaining amount was raised. The adjudicating authority confirmed the demand. The

appellant filed appeal and the Commissioner (Appeals) dismissed the appeal and confirmed the amount of Rs. 7,07,445/-. The appellant filed appeal before the Tribunal and the matter was referred to the Larger Bench. The Larger Bench relying upon the decision of Hon'ble Supreme Court in the case of CCE v. Dai Ichi Karkaria Ltd. held that the credit was taken at the time when the final product was not exempted and if the same was utilized towards payment of duty, subsequent exemption of the final product will not be a reason for reversal of each credit by the Excise authorities. The Tribunal upheld the impugned order to the extent where the credit which was lying in their account was ordered to be lapsed. In pursuance to the order passed by the Tribunal, the appellant filed the refund claim in respect of the amount which was deposited by them through PLA at the time of hearing of appeal by Commissioner (Appeals) as pre-deposit on the ground that the credit which is already utilized for payment of duty cannot be recovered. The adjudicating authority rejected the refund claim. The appellant filed the appeal the same is also dismissed.

4. The only contention of the appellant is that they are not claiming the refund of the balance amount which was lying in their RG-23A Part-II account on the date when the final product becomes exempted.

They are only asking for the amount which was subsequently paid in pursuance to the Interim order passed by the Commissioner (Appeals).

This amount is equal to the amount of credit which is already utilized on the date when their final product becomes exempted. The contention is that in view of the decision of the Tribunal, the rejection of refund is not sustainable.

5. The contention of the Revenue is that it is admitted by the appellant that the credit which is lying in their balance Is liable to be lapsed, therefore, this amount which is subsequently paid is to be treated as balance in their account and the appellants are not entitled for this amount.

6. We find that the issue in respect of reversal of credit when the final goods become exempted is settled by the Larger Bench of the Tribunal in appellant's own case by holding that the balance amount lying in the Modvat account is to lapse

and the credit of duty on inputs which is already utilized is not liable to be recovered by way of duty. In these circumstances, the rejection of the refund claim in respect of the amount which is already utilized by the appellant towards payment of duty and which was subsequently deposited in pursuance to the Interim order passed by the Commissioner (Appeals) is not sustainable. It is pointed out by the Revenue and admitted by the appellant that an amount of Rs. 54,994/- is already sanctioned by way of refund. This amount is to be taken into consideration while sanctioning the refund in pursuance to this order. The impugned order is set aside and the appeal is allowed.