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Jasch Industries Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-22-2006

Judge : N T C.N.B.

Appellant : Jasch Industries Ltd.

Respondent : C.C.E.

Judgement :

3. The material facts may be noted. On 9.9.96, the Assistant Commissioner held that appellant was not eligible for certain amount which had been taken as Modvat credit. In compliance to that order, the appellant reversed the credit on 10.3.97 and filed appeal before the Commissioner (Appeals). That appeal was decided in favour of the appellant on 25.8.99, by the Commissioner (Appeals). The appellant filed a refund claim for refund of the Modvat credit already reversed.

That claim was allowed on 30.3.01 by the Deputy Commissioner.

Subsequently, on 9.5.01, an appeal was filed by the appellant before the Commissioner (Appeals), claiming interest. This claim of the appellant was allowed by the Commissioner (Appeals) on 19.9.03. The department challenged that order before the Tribunal in appeal. The Tribunal remanded the case with certain observations on 26.2.04. In the remand proceedings, the Commissioner (Appeals) rejected the claim for interest vide Order dated 31.5.04. The present appeal challenges that order.

4. The submission of the learned Counsel for the appellant is that there is no difference between return of Modvat credit and duty paid in PLA and therefore, interest was rightly due. Reliance is placed on the judgment of the Hon'ble Gujarat High Court in the case of Indo-Nippon Chemicals Co. Ltd. and Anr. v. Union of India and Ors. - 2002 (82) ECC 657 in support of the appellant's claim.

5. The contention of the learned SDR is that the claim for interest is not maintainable and this remains settled by the observations contained in the remand order of the Tribunal. Learned SDR submits that since no appeal had been filed against that order, the findings became final and no relief is permissible. The observations of the Tribunal relied upon by the learned SDR are the following: ... The perusal of the record shows that the refund claim of the respondents arose out of the initial denial of mod vat credit of certain amount to them, when the modvat credit was denied to them by the adjudicating authority, they reversed the same in their recdord i.e. RG-23C Part II. However, they challenged that order of the Assistant Commissioner and that order was reversed by the Commissioner (Appeals) the Department challenged that order before the Tribunal which vide order dated 29.2.2000 upheld the order of the Commissioner (Appeals).

Thereafter, the respondents instead of taking recredit in their record on the strength of the above said order of the Tribunal, suo moto, they moved an application for the refund of the amount. In that application they did not ask for the interest. They rather vide their letter dated 15.6.2001 gave up their right to claim the interest Moreover the recredit could be taken by the respondents of their own suo moto, without lodging any claim for refund, as no money was to be refunded to them through cash/cheque draft. No doubt, modvat credit is also to be treated as excise duty, but in a case of credit refund, no application under any rule is required to be made. It is only the reversal of the entry which has to be made by the assessee himself after the passing of any order in his favour. Therefore, under all these circumstances, whether still any interest could be awarded to the respondents or not, has not been considered by the Commissioner (Appeal).

There is merit in the submission of the learned SDR. When the findings in the remand order was that respondent could have suo moto taken back the reversed credit lack upon winning (sic) in appeal that filing of retund application was unnecessary and the respondent gave up their claim for interest, etc. the Commissioner (Appeals) could not have granted the interest claim. The judgment of the Hon'ble Gujarat High Court has no application in the facts of the present case. The appeal fails and is rejected.

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