

Central Electronics Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-24-2006

Judge : M Ravindran

Appellant : Central Electronics Ltd.

Respondent : Cce

Judgement :

1. This appeal is directed against order in appeal dated 28/05/2004 which upheld the order in original rejecting the claim for interest by the appellant.
2. The relevant fact that arise for consideration are the appellants had availed modvat credit to the amount of Rs. 29,34,360/- (Rupees Twenty Nine Lakhs Thirty Four Thousand Three Hundred and Sixty only).

On scrutiny of the records by the range officers and on the persuasion of range officers, appellant debited an amount of Rs. 29,34,360/- (Rupees Twenty Nine Lakhs Thirty Four Thousand Three Hundred and Sixty only) vide PLA entry dated 09/12/1997 'under protest'. Show cause notice dated 09/03/1998 was issued to the appellant for the appropriation of the said amount paid by them on the ground that they had initially availed ineligible modvat credit and also were directed to show cause as to why penalty should not be imposed on them. The said show cause notice was adjudicated by the adjudicating authority who confirmed the demand and also imposed equivalent amount of penalty.

Aggrieved by the said orders, appellant preferred an appeal before the Commissioner (Appeals) who remanded back the case to the adjudicating authority to decide the same on its merits. The revenue aggrieved by such order in appeal preferred an appeal to the CESTAT, New Delhi.

CESTAT vide its final order dated 09/01/2002 dismissed the appeal of the revenue as non-maintainable. The adjudicating authority after granting an opportunity of personal hearing to the appellants, vide his order in original No. 13/2003 dated 29/12/2003, set aside the proceedings initiated by the show cause notice dated 09/03/1998 and granted the appellant credit of an amount of Rs. 29,34,360/- (Rupees Twenty Nine Lakhs Thirty Four Thousand Three Hundred and Sixty only).

The appellants vide their letter dated 03/02/2004 claimed interest on the said amount from the date of passing of order in appeal i.e.

03/08/2000. The said letter seeking the interest was rejected by the adjudicating authority. On an appeal, the Commissioner (Appeal) also upheld the order in original, hence this appeal.

3. The learned advocate appearing on behalf of the appellant submits that the provisions of Section 11BB for providing interest to the amount, illegally retained by the revenue applies in this case. It is his submission that the debit of the amount 'under protest' by the appellant on 09/12/1997 is in itself an indicator that the appellant had not agreed with the contention of the range officers. It is also his submission that the appellants claimed the refund of the duty along with interest while replying to the show cause notice, hence the revenue is liable to pay the interest to the appellant.

4. Learned DR submits that the question of granting an interest to the appellant in this case, does not arise, as the appellant had not preferred any refund claim and the adjudicating authority has granted them the credit on his own on setting aside the proceedings initiated by the show cause notice.

5. Considered the submissions made at length by both sides and perused records. I find from the records that it is not disputed that appellants had initially debited the

amount on the direction of the range officers. The appellants were issued show cause notice on 09/03/1998 to confirm the demand for availing ineligible credit. The said protest proceedings were dropped by the adjudicating authority and he allowed the appellant the modvat credit of the amount of Rs. 29,34,360/- (Rupees Twenty Nine Lakhs Thirty Four Thousand Three Hundred and Sixty only). In this case, the appellant seeks interest from the revenue for the period from 03/08/2000 till 29/12/2003. In order to appreciate the claim of the appellant provisions of Section 11BB of the Central Excise Act has to be read which are as under: Interest on delayed refunds - If any duty ordered to be refunded under Sub-section (2) of Section 11B to any applicant is not refunded within three months from the date of receipt of application under Sub-section (1) of that section, there shall be paid to that applicant interest at such rate, [not below five per cent] and not exceeding thirty per cent per annum as is for the time being fixed [by the Central Government, by Notification in the Official Gazette], on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty: Provided that where any duty ordered to be refunded under Sub-section (2) of Section 11B in respect of an application under Sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise], under Sub-section (2) of Section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said Sub-section (2) for the purposes of this section].

6. From the plain reading of the above provisions, it can be seen that the interest can be demanded from the revenue only under the provisions of Section 11BB and that also, on the order of refund issued under Sub-section 2 of Section 11B. In short, the interest that can be claimed by an assessee from the revenue is only

when any refund claim is sanctioned and ordered by the authorities and not paid. The refund claim of assessee is covered under the provisions of Section 11B(1) and (2). The provisions of Section 11B(1) and (2) are as under: Claim for refund of duty - (1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of [one year] [from the relevant date] [in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in Section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person: Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of Sub-section (2) substituted by that Act:] [Provided further that] the limitation of [one year] shall not apply where any duty has been paid under protest.

(2) [If, on receipt of any such application, the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund: Provided that the amount of duty of excise as determined by the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to - (a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India; (b) unspent advance deposits lying in balance in the applicant's account current maintained with the [Commissioner of Central Excise]; (c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act; (d) the duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person; (e) the duty of

excise borne by the buyer, if he had not passed on the incidence of such duty to any other person; (f) the duty of excise borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify; Provided further that no notification under Clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty has not been passed on by the persons concerned to any other person.

7. It can be seen from Sub-section (1) of Section 11B that any person who is claiming the refund of duty of excise shall make an application for refund to the jurisdictional Assistant Commissioner or Deputy Commissioner as the case may be, in such form and manner, as may be prescribed. It is undisputed that the refund claim has to be filed in form R which is prescribed document. If, the applicant does not make any refund claim under the prescribed form, the same would not be considered. In the present case, I find that the appellant had not preferred any refund claim of the amount of duty debited by them 'under protest'. If the appellants had not filed any refund claim against the amount debited by them 'under protest', there can be no order as to rejecting or allowing their refund claim. In the absence of any such order under Section 11B(2), the appellant cannot seek any interest from the revenue.

8. Accordingly, in view of the facts and circumstances, as mentioned above, I do not find any reason to interfere in the impugned order. The appeal filed by the appellant fails and is dismissed.

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