Cce Vs. Agrawal Exports

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-12-2006

Judge : M Ravindran

Appellant : Cce

Respondent : Agrawal Exports

Judgement :

1. This appeal is directed against order in appeal dated 06/07/04 wherein learned Commissioner (Appeal) has set aside the order in original that rejected the refund claim of the respondent.

2. None appeared on behalf of the respondent despite notice. Since the matter is pending from 2004, I take up the same for disposal in the absence of respondent.

3. Considered the submissions made at length by the learned DR and perused records. I find that the refund claim of the respondent was rejected by the adjudicating authority but was sanctioned by the Commissioner (Appeal) in an appeal. While granting the amount of refund, the adjudicating authority has denied the respondent interest payable on such refund. The learned Commissioner (Appeal) while allowing the interest to the respondent has held as under: 4. On a careful consideration of the written and oral submissions made by the Appellants. I find the dispute in the present Appeals relates to the interest payable on delayed payment of refund under Section 11BB of the Central Excise Act, 1944. While considering the interest under Section 11BB on refund the Adjudicating Authority

had observed that the refund claim has been sanctioned within 3 months from the filing of refund and hence no interest is payable. Further he also stated that in this case the Commissioner (Appeals) vide Order dated 17.09.2003 allowed the appeal of the applicants and thus the said order is to be treated as an order under the said Sub-section (2) for the purposes of the Section 11B. The Applicant filed refund claim on 03.02.2004, which is being sanctioned to the Applicant within the stipulated period of these months from the date of receipt of refund application and hence no interest is payable to the applicant as per provisions of Section 11BB of the Central Excise Act, 1944.

5. I find that in the Order in Appeal No. 510/2003 dated 17/09/03 the order passed by the Lower authority was set aside with consequential relief to the party. Accordingly the party is entitled to refund of Rs. 96,002/- as well as interest in terms of Section 11BB of the Act. While rejecting the interest on refund, the Adjudicating Authority considered the date of application as 03.02.04 based on Order-in-Appeal dated 17.9.2003 which is not correct since the refund claim was originally submitted by the Appellants in October, 95. Hence, the Appellants are eligible for interest on the refund amount after the expiry of the three months period from the date of filing of refund claim.

4. It can be seen from the above reproduced paragraphs that the Commissioner (Appeal) has correctly applied the settled law. The Larger Bench of the Tribunal in the case of Jayanta lass Industries (P) Ltd. v. Commissioner of Central Excise, Kolkata as reported at has precisely settled the law as under: Refund of the amount deposited during investigation payable to assessee - Interest on delayed refund also payable for a period from the expiry of three months from the date of application for refund till date of payment at the rate specified in Section 11BB of Central Excise Act, 1944.

5. Accordingly, in view of the law being settled by the Larger Bench in are identical issue, respectfully following the same, I do not find any merit in the appeal filed by the revenue. Appeal is dismissed.