

Cce Vs. Polyplex Corporation Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-28-2007

Reported in : (2007)(123)ECC159

Judge : P Das

Appellant : Cce

Respondent : Polyplex Corporation Ltd.

Judgement :

1. The Revenue filed this appeal against the order of the Commissioner (Appeals), whereby, it has been directed that the respondents are entitled for interest from the date of the Tribunal's order.

2. The relevant facts of the case, in brief, are that the show cause notices dated 22.7.99 and 29.7.99 were issued proposing to disallow Modvat credit of Rs. 3,66,328/- on the ground that the credit is not available to the respondents in respect of the goods received back by them from their customers. Vide Order-in-Original dated 16.12.99, the Dy. Commissioner disallowed the credit of Rs. 3,66,328 - and imposed penalty of equal amount along with interest. During the year 1999-2000, the respondents tiled refunds/rebate claims before the Dy.

Commissioner, Kanpur in other cases. By Adjudication Orders dated 14.3.2000, 8.10.2000 and 21.11.2000, the Dy. Commissioner allowed the refund claims but the entire amount of Rs. 8,27,190/- was adjusted against the demand as

confirmed by the Adjudication Order dated 16.12.99. Subsequently, the Commissioner (Appeals) vide order-in-appeal dated 22.2.2002 set aside the adjudication order dated 16.12.99. Then, the respondents filed refund claims of Rs. 8,27,190/- on 4.3.2002 in pursuance of the order of the Commissioner (Appeals). The Revenue filed an appeal before the Tribunal against the order-in-appeal dated 22.2.2002, which was rejected by the Tribunal vide Final Order dated 11.6.2002. In spite of the order of the Tribunal, the Revenue failed to refund the amount to the respondents. The respondents filed a writ application before the Hon'ble High Court of Judicature at Allahabad.

The Hon'ble High Court by order dated 11.11.2003 in Civil Writ Petition No. 279 of 2003 directed the Revenue to refund the amount claimed by the respondents with interest as provided under Section 11BB of the Central Excise Act within a period of one month of the production of the certified copy of the order before the concerned authority. In compliance of the order of the Hon'ble High Court, the Dy.

Commissioner, Central Excise, ordered refund of Rs. 8,27,190/- and payment of interest of Rs. 82,719/-. It has been observed by the Dy.

Commissioner that for payment of interest, the relevant date should be reckoned in terms of Section 11 BB of the Central Excise Act, 1944 after three months from that date of the order of the Tribunal i.e.

11.9.2002. The respondent filed an appeal before the Commissioner (Appeals) against payment of interest. In the impugned order, the Commissioner (appeals) held that the respondents are entitled for interest from the date of the order of the Tribunal.

3. The Id. DR on behalf of the Revenue submits that the refund is arising out of the Final Order of the Tribunal and, therefore, the adjudicating authority rightly ordered for payment of interest after three months of the Tribunal's order as provided under Section 11 BB of the Central Excise Act, 1944. He further submits that the Commissioner (Appeals) relied upon the decision of the Hon'ble High Court. Calcutta in the case of Eastern Coils Private Ltd. v. Commissioner, which is not applicable herein. He relied upon the Larger Bench decision of the Tribunal in the

case of Indian Thermoplastics (P) Ltd. .

4. The Id. Advocate on behalf of the respondent submits that the interest is liable to be paid after three months from the date of filing of the refund application. He relied upon the decisions of the Tribunal as under: Ghirdhar Gopal Agrawal v. CCE, Bhopal 2007 (80) RLT 780 (CESTAT-Delhi) 5. After hearing both the sides and on perusal of the records, it is seen that the Commissioner (Appeals) directed for payment of interest to the respondent from the date of Tribunal's order, which has not been challenged by the respondent. Therefore, the contention of the Id. Advocate that payment of interest after three months from the date of refund claim application is not maintainable. In the present appeal, Revenue contended that the order of the Commissioner (Appeals) for payment of interest from the date of Tribunal's order is contrary to provision of Section 11BB of Central Excise Act, 1944. The Larger Bench of the Tribunal in the case of Indian Thermoplastics (P) Ltd. (Supra) held that the payment of interest is after expiry of three months from the date of receipt of the final order of the Tribunal till the date of payment. It has further been held that such computation of period will be in consonance with provisions as contained in Section 11BB of the Central Excise Act, 1944. In the present case, it is seen that the issue is finally settled by the Tribunal vide order dated 11.6.2002 and, therefore, the respondent is entitled to get interest after expiry of three months of the Tribunal's order. So, the adjudication order passed by the Dy. Commissioner of the Central Excise is correct.

6. The Id. Advocate of behalf of the respondent relied upon the various decisions of the Tribunal, which are not applicable in the present case. In the said cases, the Tribunal held that interest due to the applicant is to be calculated from the date of the filing of the refund application. The Commissioner (Appeals) passed the order following the decision of the Hon'ble High Court of Calcutta in the case of Eastern Coils (P) Ltd. (supra). The said case relates to refund of pre-deposit under Section 35F of Central Excise Act, 1944 and payment of interest thereon. The present case is not refund of pre-deposit. In any event, in this case, the Hon'ble High Court, Allahabad by Order dated 11.11.2003 directed to pay interest under Section 11BB of Central Excise Act, 1944. So, the case of Eastern Coils (P) Ltd. is not applicable. Further in tins case, the issue is settled by the Final Order dated

11.6.2002 of the Tribunal and, therefore, the decision of the Larger Bench of the Tribunal in the case of Indian Thermoplastics (P) Ltd. is squarely applicable.

7. So, the impugned order passed by the Commissioner (appeals) is not sustainable and the same is set aside. The adjudication order is upheld. The appeal tiled by the Revenue is allowed.

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