

Cce Vs. Divisional Manager,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-13-2007

Reported in : (2008)10STR290

Judge : P Das

Appellant : Cce

Respondent : Divisional Manager,

Judgement :

1. The Revenue filed this appeal against the order-in-appeal No.95-ST/BPL/06 dt. 19.12.06 whereby Commissioner (Appeals) directed to refund the amount of Rs. 1,08,109/- under Section 11B of the Central Excise, 44 alongwith interest.
2. The relevant facts of the case in brief are that the respondent filed a refund application on excess payment of tax. The adjudicating authority sanctioned the refund claim but it was denied on the ground of unjust enrichment. The respondent filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals), allowed the appeal of the respondent.
3. Ld. DR submits that it is admitted position from the Commissioner (Appeals) order that the respondent did not submit any evidence in support of the unjust enrichment. So, the Commissioner (Appeals) cannot allow the refund claim on the basis of new evidence, which is hit by Rule 5 of Central Excise (Appeals) Rules, 2001. She relied upon the decision of the Tribunal in the case of Mandhana

Dyeing v. CCE, Thane .

4. Ld. Counsel on behalf of the respondent submits that it is evident from the impugned order that the Commissioner (Appeals) examined all the documents placed by the respondent. He further submits that Commissioner (Appeals) has no power to remand the matter to the adjudicating authority and therefore, he has rightly examined the documents and allowed the refund claim.

5. After hearing both the sides and on perusal of the orders, I find force in the submission of the Ld. DR, It is seen that the Commissioner (Appeals) observed that the appellant had not submitted the documentary evidence before the adjudicating authority. Rule 5 of Central Excise (Appeals) Rules, 2001 provides production of additional evidence before Commissioner (Appeals). Sub-rule 2(2) of Rule 5 of the said Rules provides, no evidence shall be admitted under Sub-rule (1) unless the Commissioner (Appeals) records in writing the reasons for its admission. In the present case, the Commissioner (Appeals) did not record any finding for admission of the new evidences. Therefore, the impugned order is not sustainable. However, the respondent placed the evidences before the Commissioner (Appeals) which are required to be examined by the adjudicating authority. Accordingly, the matter is remanded back to the adjudicating authority to examine the evidences in connection with unjust enrichment. The appeal is allowed by way of remand.

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