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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-24-1996

Reported in : (1996)(88)ELT725Tri(Mum.)bai

Appellant : Mukand Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This application is for seeking intervention in the proposal of the jurisdictional Central Excise Officers to charge interest on the Modvat credit held to be inadmissible vide the order which is under challenge in the main appeal.

2. This Bench vide its interim order dated 19-3-1996 has granted stay against penalty imposed on the applicants. The applicants had, in pursuance of the order-in-original had voluntarily reversed the Modvat credit amounting to Rs. 53,97,,799/-. Since this was done by them voluntarily, no mention thereto was made in the said stay order passed by this Bench. Subsequently, on 10-4-1996, the jurisdictional Asstt.

Commissioner has directed the applicants to deposit an amount of Rs. 2,92,812/- being interest for the period 25-8-1995 to 1-12-1995 on the specific observation that the Tribunal in their order dated 19-3-1996 had granted stay against recovery of penalty but not against recovery of interest under Rule 57U(4) of the Central Excise Rules, 1944.

3. On hearing the arguments made by Shri Patankar, the ld. Advocate, it appears that the impugned letter of the Asstt. Commissioner dated 10-4-1996 was more in the nature of an administrative directive and that the proper course of action should have been for the applicants to approach the jurisdictional Commissioner. The ld. Advocate submits that they have made representation but that there was no response. He, therefore, seeks appropriate direction from us.

4. Section 11AA prescribes for levy of interest on delayed payment of duty. The Explanation (1) thereto indicates that the relevant date for determination of the commencement of the period for which interest is to be charged thereunder is the date of the order of the Appellate authority or the Court. In other words, the liability to interest does not commence, until the dispute is finally settled by the Commissioner (Appeals), Appellate Tribunal or the Court, as the case may be. It would, therefore, appear that the demand for recovery of interest at this stage is premature. However, since in our opinion, the impugned communication from the Asstt. Commissioner is in the nature of administrative instruction, in terms of the powers vested in us under Rule 41 of the CEGAT (Procedure) Rules, we direct the jurisdictional Commissioner to examine the representation made by the applicants and issue appropriate orders to the jurisdictional Asstt. Commissioner.