(2011) 03 KAR CK 0002

In the Karnataka High Court

Case No : C.E.A. No. 83 of 2007

Commissioner of C. Ex. APPELLANT

Vs

Stella Rubber Works RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Citation : (2011) 267 ELT 495 : (2013) 21 GSTR 463

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : T.M. Venkata Reddy, for the Appellant; G. Sampath, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is by the revenue challenging the order passed by the Tribunal 2007 (211) E.L.T. 433 (Tri.-Bang.) which has set aside the order passed by the Appellate Authority and the Original Authority who have adjusted the amount ordered to be refunded towards interest claimed.

2. The Assessee prepared a rebate claim of Rs. 2,29,433/-. It was sanctioned by the revenue as there was no dispute about the Assessee being eligible for this amount. Instead of making payment of this amount to the Assessee, the department informed the Assessee that they were due interest with regard to the belated payment of duty pertaining to the period 1982-83 to 1984-85. The said amounts have been paid belatedly. However, the revenue did not issue any show cause notice demanding interest after receiving the duty. It is only after an order for refund of the rebate claim was made, instead of paying the said amount, they have informed the Assessee that they are adjusting the same towards interest payable for the delayed duty for the period 1982-83 to 1984-85. The said order of the Assessing Authority has been affirmed by the Appellate Authority. In an appeal, the Tribunal held that, only the money which is already adjudicated to be due by the Assessee to the Department can be adjusted, but the amount ordered to be refunded cannot be adjusted towards a mere claim, that is, even before

adjudication of the said claim. Accordingly, it set aside the order and directed the payment of the amount ordered to be refunded. It is against the said order, the present appeal is filed.

3. The facts are not in dispute. The Assessee is entitled to a refund of Rs. 2,29,433/- and the order passed to that effect has attained finality. In so far as the delayed payment of duty for the period 1982-83 to 1984-85 is concerned, on receipt of such payment, no steps were taken by the Department to claim interest for the delayed payment. For the first time their claim for delayed payment by way of interest is made after the order for refund of rebate claim is allowed, that too for refund of the amount, an attempt is made to adjust the interest claim. As the interest claim is not yet adjudicated, the question of adjusting the said claim towards the admitted claim of refund is impermissible in law.

4. In fact, it is relevant to point out that Section 11AA was inserted by Act 22 of 1995 which came into effect from 26-5-1995. In the instant case, the claim for interest is in respect of the belated payment of duty pertaining to the period 1982-83 to 1984-85. Therefore, on the face of it, the said claim has no basis and it is unfortunate that the revenue invokes such excuses for not paying back the Assessee amounts, which are legitimately due to them. In these circumstances, we deem it proper that the Assessee is entitled to the cost of the proceedings.

5. Hence, we pass the following

ORDER

6. Appeal is dismissed.

7. The substantial question of law framed is answered in favour of the Assessee and against the revenue and the Appellant shall pay a cost of Rs. 5,000/- to the Respondent within a period of four weeks from the date of receipt of a copy of this order.