(2007) 11 KAR CK 0033

In the Karnataka High Court

Case No : C.E.A. No. 1 of 2004

Commissioner of C. Ex. — APPELLANT

Vs

Vijai Industries — RESPONDENT

Date of Decision : 28-11-2007

Acts Referred:
Central Excise Act, 1944 — Section 11 BB

Citation : (2010) 258 ELT 358

Hon'ble Judges : K.L. Manjunath, J;Arali Nagaraj, J

Bench : Division Bench

Advocate : Aravind Kumar, for the Appellant; S. Raghu, M.G. Varadharajan and Vijaya Prakash, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—This appeal is by the revenue challenging the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Bangalore in 2003 (111) ECR 704] raising the following substantial question of law:

Whether the Tribunal was justified in directing the Appellant to pay the interest on refund for the period from 17-4-2000 to 5-12-2000 when there was a lis pending before the appellate authorities?

2. We have heard the learned Counsel for the parties.

3. In respect of the duty payable by the Respondent in an appeal filed by the Respondent, CEGAT passed an order on 25-11-99 setting aside the duty levied upon the Respondent, This order was passed on 25-11-99. Pursuant to the order dt. 25-11-99, the Respondent filed a refund claim for Rs. 5,60,000/- and Rs. 16,685/- respectively on 17-1-2000. The adjudicating authority, namely the Deputy commissioner passed an order sanctioning refund as per his order dt. 18-7-2000. However appropriated the refund towards the dues determined in Order-in-Original No. 8/98 dt, 26-5-98. The order of the Deputy Commissioner in appropriating the refund amount was questioned by the Respondent by filing an

application before the CEGAT, which appeal came to be allowed on 20th September 2000. Based on the directions of the CEGAT, the Deputy Commissioner passed an order on 5-12-2000 sanctioning the refund, but disallowed the claim for interest in Order-in-Original No. 77/2000. In not granting the interest for the intermediate period, the Assessee filed an appeal before the Commissioner of appeals which came to be rejected by his order dt. 22-4-2000. Aggrieved by the same, the Assessee filed an appeal before the CEGAT and the CEGAT by its order dt. 9-9-2003 has passed an order holding that Assessee is entitled to claim interest for the period 17-4-2000 to 5-12-2000. This order is called in question in this appeal.

4. Having heard the counsel for the parties, we are of the opinion that on facts no substantial question of law arises in this appeal for the following reasons:

Admittedly, the appeal filed by the Assessee challenging the levying of duty on him was allowed by the CEGAT on 25-11-1999 and refund claim was filed by him on 17-1-2000. If the refund claim is not ordered within three months he is entitled to claim interest u/s 11BB of the Central Excise Act. It is not in dispute that the Deputy commissioner has sanctioned the refund by his order dt. 18-7-2000. However, there is an order of appropriation to appropriate the refund amount towards other claims which has been set aside by the CEGAT later. Therefore, the point to be considered by us in this appeal is whether the refund claimed was sanctioned by the Deputy commissioner on 18-7-2000 or on a later date due to the order of remand of CEGAT as per its order dt. 20th September, 2000.

5. It is not in dispute that on 18-7-2000 as per Annexure-B the Deputy commissioner who is the adjudicating authority has held that the Assessee was entitled for refund. After sanctioning the refund, the said amount was appropriated for other dues. Therefore, it is clear that if other dues were not there, the Respondent-assessee was entitled for the amount of refund forthwith.

6. In the circumstances we are of the opinion that the arguments advanced by the learned Counsel for the revenue that the order of refund has to be reckoned not from 18-7-2000 but the same has to be considered with effect from 30-1-2001 has to be rejected.

7. In the circumstances, we do not see any merit in this appeal. Accordingly, the appeal is dismissed.

