(2005) 06 KAR CK 0072

In the Karnataka High Court

Case No : Writ Petition No. 43211 of 2004

Dynamatic Technologies Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 20-06-2005

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

Citation : (2005) 126 ECR 391 : (2005) 186 ELT 277

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Raghuraman and Chythanya, for the Appellant; R. Veerendra Sharma, ACGSC, Devhadoss, ASG and Arvind Kumar, ACGSC, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Writ petition challenging a notice issued u/s 11A of the Central Excise Act, 1944 [for short, the Act], proposing recovery of certain amount for the reason that it had been erroneously refunded to the petitioner.

2. The petitioner has approached this Court questioning the legality of such a notice on the premise that the refund itself has been given to the petitioner in terms of the directions issued by the Appellate Commissioner in an appeal preferred by the petitioner and as a sequel to the order-in-appeal.

3. Notice had been issued to the respondents. Respondents have entered appearance through Sri Veerendra Sharma, learned Central Government Standing Counsel.

4. Though the department initially wanted to assert that the notice has been issued only by way of protective measure and that in the event of the department succeeding in their appeal before the Tribunal, preferred against the order passed by the Appellate Commissioner, when the department will have to recover the amount that has already been refunded and to ensure that any hassle of a plea of limitation is not encountered at that time, the notice has been issued etc.

5. However, after the matter was argued and it was pointed out that in a situation of this nature i.e. the refund being only as a consequence of an order/ direction issued by the Appellate Authority, as a quasi-judicial functionary, any recovery of amount can only be if the order is again modified further in the appeal proceedings and not otherwise and even in such an event, the amount can be recovered as a consequential action and not independently, respondents have realized the futility in issuing such a notice, the show cause notice being wholly unnecessary and also not one within the scope of the power u/s 11A of the Act.

6. The respondents having realized this position, have now filed a memo through their Standing Counsel today, inter alia indicating that the department is now taking steps to withdraw the notice. The memo is received on record.

7. Sri Raghuraman, learned Counsel for the petitioner submits that as the department itself is withdrawing the notice, nothing survives in this writ petition.

8. In the result, this writ petition is disposed of, as having become unnecessary in the light of the undertaking given in the memo indicating that the department itself is withdrawing the show cause notice. Ordered accordingly. The respondents should take such action within a period of eight weeks from today.

