(2013) 02 CESTAT CK 0003

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 1834 Of 2012 With C.O. No. 4369 Of 2012

?M/s DCM Shriram Consolidated Ltd. APPELLANT

Vs

CCE, Indore RESPONDENT

Date of Decision : 17-02-2013

Acts Referred:

Citation : (2013) 02 CESTAT CK 0003

Hon'ble Judges : Dr. Satish Chandra, J;V. Padmanabhan, Technical Member

Bench : Division Bench

Advocate : S. C. Kamra, Ranjan Khanna

Final Decision : Allowed

Judgement

1. The present appeal is directed against the order-in-appeal No. IND/CEX/000/APP/84/12 dated 23.03.2012 passed by the Commissioner (Appeals) Customs, Central Excise & Service Tax, Indore.

2. The brief facts of the case are that the appellant are engaged in the manufacture of urea (nitrogenous fertilizer) and registered with the Service Tax department under the category of "transportation of gas through pipeline or other conduit" provided by Gas Authority of India (GAIL) who had charged service tax from the assessee at the provisional price, which was on the higher side. After licensing of the price the refund became due. The GAIL has authorised the appellant to receive the refund so the refund claim was filed which was rejected being time barred and amounts to unjust enrichment. Being aggrieved, the present appeal is filed by the appellant.

3. After hearing both the parties and on perusal of record, it appears that the appellant is engaged in the manufacture of fertilizer which is exempted from the duty. The appellant paid the service tax to the GAIL who authorised the appellant to receive the refund. Hence, no element of unjust enrichment.

4. From the record, it appears that the identical issue has came up before the

Tribunal in the case of Chambal Fertilizers and Chemical Ltd. vs. CCE, Indore -ST Appeal No. 1805/2012 dated 02.01.2017 where it was observed that:

"9. In the present case, the transportation charges were determined by PNGRB in terms of the 2008 Regulations, which itself provides that the prices are provisional. The appellant as well as GAIL were aware of this fact and on later revision of price by PNGRB vide its pricing circulars, the adjustment of prices was made through credit notes. Since, only on issuance of credit note by GAIL on 20.09.2010, the provisional prices were finalised, the said date in our opinion, will be considered as relevant date in terms of clause (eb) of Explanation-B to Section 11B ibid. The refund claim filed before the jurisdictional authorities on 17.01.2011 and subsequently filed before the authorities of service provider on 24.02.2011, will not hit by limitation of time as prescribed under Section 11B ibid.

10. In view of the foregoing, the appellant's eligibility for refund of service tax is prima facie sustainable on legal grounds. Since the appellant is located in the jurisdiction of service tax authorities of Kota, before whom the refund application was filed on 17.01.2011, the required verification of documents may be carried out by the jurisdictional Assistant Commissioner of Service tax, who is directed to examine the claim and dispose the same in view of the findings above".

5. By following our earlier decision (supra), we set-aside the impugned order and remand the matter to the adjudicating authority for denovo adjudication in the light of the above observations but by providing a reasonable opportunity to the assessee to present their case with liberty to file additional evidence, if necessary, as per law.

6. In the result, the appeal filed by the appellant is allowed by way of remand. Cross-objection stands disposed of accordingly.

(Dictated and pronounced in the open Court).