Commr. of C. Ex. Vs. Harish Textiles Engineers Pvt.

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SooperKanoon Citation : sooperkanoon.com/10584

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-07-1997

Reported in : (1997)LC308Tri(Mum.)bai

Appellant : Commr. of C. Ex.

Respondent : Harish Textiles Engineers Pvt.

Judgement :

1. This is an appeal filed by the Collector of Central Excise & Customs, Vadodara against a captioned order. In the captioned order the Collector of Central Excise (Appeals) had held that (a) the Department did not file any appeal against the decision of the Asstt. Collector regarding the limitation issue and (b) the Department has filed the appeal on merits making a new ground. The Collector has held that respondent is entitled to claim the discount given by them and benefit obtained by them under Notification 120/75, dated 30-4-1975 cannot be denied to them.

2. The Department has come up in appeal against the said order. The ld.Departmental Representative Shri Gurnani has invited our attention to the order passed by the Asstt. Collector, Central Excise against which the impugned order has been passed. In the said order, the Asstt.

Collector has withdrawn the show cause notice as it was barred by the limitation. Against the said order he fairly concedes that no appeal was filed before the Commissioner (Appeals). Therefore, the question whether the Department could agitate the matter on merit, taking a new ground.

3. We have considered the matter carefully. The Department cannot assail the order of the Collector taking a new ground. The approach of the order passed by the Commissioner Central Excise (Appeals), cannot be fault with. When the time bar has been held against the Department by the Asstt. Collector and the same not having been questioned by the Department, in law, how can the Department question the entire matter on merits? Because even if we have to accept for one moment for the sake of argument on merits the department has good case, if the claim is barred by limitation then the Department cannot succeed. To put it in other way, the Department has to succeed not only on the basis of the merits but also satisfy the adjudicating authority that it is not barred by limitation. If one of the conditions viz. limitation is not fulfilled then the Department will fail in this case. The finding of the Asstt. Collector having become final against the Department in respect of limitation, he cannot be challengeable on merits. Hence the appeal of the Department is dismissed.