

indfos Industries Ltd. Vs. Cc

indfos Industries Ltd. Vs. Cc

SooperKanoon Citation : sooperkanoon.com/13618

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-09-1998

Reported in : (1998)(78)LC310Tri(Delhi)

Judge : R T Lajja, A Unni

Appellant : indfos Industries Ltd.

Respondent : Cc

Judgement :

1. In this appeal filed by M/s. Indfos Industries Ltd., the matter relates to the claim for refund filed by the appellants on 28.2.1995 for the period 17.3.1986 to 7.8.1989. The ground for claiming the refund was that the appellants were engaged in the manufacture of instruments for Pressure/Temperature Controls for Industrial Application and had imported Bellows, a component part for such instrument. They sought classification of the Bellows under sub-heading 9032.90 of the Customs Tariff Act. The Customs Department classified the said Bellow under sub-heading No. 8307.10. The importers paid the customs duty as assessed by the Department and got the goods cleared out of customs charge. It is seen that w.e.f. 10.9.1991, the Customs Department agreed with the importers that the goods were correctly classifiable under sub-heading No. 9032.90 and were otherwise eligible for the benefit of Notification No. 69/86-Cus. The appellants filed refund claim for the period of six months from the date on which the revised classification was agreed to by the Customs. Their refund claims were sanctioned by the Department. They further filed refund claims for the Customs

duty paid during the period 17.3.1986 to 7.8.1989 and the claim was filed on 28.2.1995. The refund claims were rejected as time barred. The ground taken by the appellants is that after the classification was revised by the Customs and their contention had been accepted, suo motu refund should have been sanctioned and in such situation no limitation would apply.

2. The matter was posted for hearing on 9.6.1998. No one appeared for the appellants. The appellants have sought adjournment on the following ground: In this connection we beg to submit that an employee of our Company who has been exclusively dealing with this case is presently on long leave upto 10.9.1998. We are, therefore, not in a position to present our case on the date fixed for hearing. We would, therefore, request that this case may kindly be fixed on any other date after 15.9.1998 and oblige.

3. When the matter was called no one appeared for the appellants. This communication had been received in the Registry on 4.6.1998. The appellants are from Delhi. The matter is very old and the refund claim filed by the appellants related to the period 17.3.1986 onwards. The ground taken for adjournment is not satisfactory. We reject the request for adjournment and proceed to deal with the case on merits after hearing Shri S.N. Ojha, Id. DR.4. We have carefully considered the matter. There is no dispute on the facts. The refund claims were filed on 28.2.1995 for the period 17.3.1986 to 7.8.1989. The refund claims were clearly time bar. *Miles India Ltd. v. Asstt. Collector of Customs 1987 (30) ELT 641 (SC) : 1985 ECR 289 (SC) : ECR C 750 SC: ECR C Cus 1094 SC*, the Hon'ble Supreme Court had held that the Appellate Tribunal as well as Customs Authorities were bound by the statutory period of limitation. In the case of *Collector of Central Excise, Chandigarh v. Doaba Co-operative Sugar Mills*, The Hon'ble Supreme Court had again reiterated that for refund claims made before the Departmental Authorities, the limitation as provided under Customs Act/Central Excise Act or the Rules made thereunder, were applicable.

In the case of *Union of India v. Kirloskar Pneumatic Co. Ltd. 1996 (64) ECR 509 (SC)*, the Apex Court had held that even the High Court could not direct Customs Authorities acting under the Customs Act to act contrary to the mandatory

provisions under Section 27 of the Customs Act, 1962 which prescribes the period of limitation for filing refund claims under the provisions of the Customs Act, 1962.

6. The present case is not the one where any direction had been given by superior authority for granting suo motu refund. The refund claims which were within the period of limitation had already been sanctioned in favour of the appellants.

7. Taking all the relevant facts and consideration into account, we do not find any merit in this appeal and the same is rejected. Ordered accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com