

Subham Polymers Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-31-1999

Reported in : (1999)(114)ELT718TriDel

Appellant : Subham Polymers Ltd.

Respondent : Collector of Central Excise

Judgement :

1. When this appeal came up for final hearing on 24-3-1999 on account of non-appearance of the appellant, appeal was dismissed for non-prosecution. Actually, the appellant had sent a representation to this Tribunal requesting to dispose of the appeal in the light of the Final Order No. 5738/97, dated 29-12-1997 passed by the West Zonal Bench, Mumbai in their own case. A copy of the said decision was also sent along with the said representation. Thus without noting the said contention of the appellant, the appeal happened to be dismissed. Now the appellants pray for restoration of the appeal and for disposal of the same on merits.

3. Appellants in this representation sent to this Tribunal prayed for disposal of the case on merits. So it was not proper on the part of the Tribunal to dismiss the same on the ground of non-prosecution.

Consequently werestore the appeal.

4. In the impugned order, the Commissioner found that the appellant had recovered excess amount on account of freight and insurance charges which is more than the actual expenditure incurred by them. In such a situation, the Commissioner took a view that the excess amount of freight and insurance is includible in the assessable value of the woven sacks Under Section 4 of the Central Excise Act. This conclusion reached by the Commissioner is under challenge.

5. Issue identical to the one raised in this appeal was the subject matter in another appeal. That appeal by the present appellant firm itself was decided by the West Zonal Bench at Mumbai in Appeal No.E/3517/92-A. That appeal was allowed by judgment dated 10-12-1997 and order passed by Commissioner was quashed. The decision in that appeal between the same parties should govern the issue raised in this appeal as well. As a result therefore, this appeal has only to be allowed. We do so. Order of the Commissioner impugned in this appeal is set aside.

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