

Collector of Central Excise Vs. Kay Cee Electricals

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-04-1999

Reported in : (2000)(68)ECC95

Judge : S Kang, a T V.K.

Appellant : Collector of Central Excise

Respondent : Kay Cee Electricals

Judgement :

2. In the impugned order, the Collector of Central Excise (Appeals) held that the review against the order passed by the Assistant Collector Under Section 35E(3) of the Central Excise Act was beyond the period of one year. Therefore, the review appeal is time barred Under Section 35E of the Central Excise Act, 1944.

3. Ld. JDR, appearing on behalf of the Revenue, submits that no doubt the order was signed by the adjudicating authority on 9.3.92, but the same was issued on 12.3.93, as mentioned on the top of the Order-in-Original. He, therefore, submits that the appeal be allowed.

4. Ld. Counsel, appearing on behalf of the respondents, submits that the review order was passed on 16.3.93. He submits that even if we presume that the adjudication order is dated 12.3.92, as now pleaded by the revenue, the review order is still beyond the time prescribed Under Section 35E(3) of the Central Excise Act. He relies upon the decision of the Supreme Court in the case of C.C.E.

v. M.M. Rubber. Co. . He, therefore, prays that the appeal be dismissed.

6. In this case, the issue is whether the review order was passed within one year of the passing of the adjudication order Under Section 35E(3) of the Central Excise Act. The contention of the Revenue is that the order was passed on 12.3.92. If we accept that the date of passing of the adjudication order is 12.3.92, even then the review order passed on 16.3.93 was beyond the time, prescribed Under Section 35E(3) of the Central Excise Act. The Hon'ble Supreme Court in the case of C.C.E. v.MM. Rubber Co. (supra) held that the review order should be passed within the time limit prescribed Under Section 35E from the date of passing of the adjudication order.

7. In view of the decision of the Hon'ble Supreme Court, we find no merit in the appeal. The appeal, filed by the Revenue, is rejected.

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