Garware Polyester Ltd. Vs. Commissioner of Central Excise,

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SooperKanoon Citation : sooperkanoon.com/26354

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-23-2001

Appellant : Garware Polyester Ltd.

Respondent : Commissioner of Central Excise,

Judgement :

1. Garware Polyesters Ltd imported consignments described as VMCH. Its claim for exemption contained in notification 47/89 of the product was denied by the Assistant Collector, whose order of adjudication denying such exemption was confirmed by the Collector (Appeals), who rejected the importers appeal.

2. Subsequently, the importer filed a claim under Section 27 of the Act for refund of the duty, which became due if the notification were available. The Additional Collector rejected this claim on the ground that the issue had been settled by the order of the Collector (Appeals) which it does not appeal and his finding in this regard has bene confirmed by the Collector (Appeals). The appeal is against that order.

3. The appellant is absent despite notice. We have read the memorandum of appeal and heard the departmental representative.

4. The contention in the appeal is that, notwithstanding whatever the Commissioner (Appeals) might decide, the appellant is entitled in law to ask for and obtain the refund of duty wrongly paid under Section 27 of the Act. The Commissioner (Appeals) has, by his order dismissing the importer's appeal, held

that the benefit of exemption notification is not available to the goods. His order having attained finality, since it has not been appealed, that is the position in law, so far as the appellant's entitlement to the exemption notification is concerned. The Additional Collector has therefore rightly rejected the claim as not maintainable.