Goodyear India Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-19-2002

Reported in : (2002)(104)LC630Tri(Delhi)

Judge : A T V.K.

Appellant : Goodyear India Ltd.

Respondent : Cce

Judgement :

1. The issue involved in this appeal filed by M/s. Goodyear India Ltd. is whether the refund claim filed by them is hit by time limit specified in Section 27 of the Customs Act.

2. I heard Shri Amit Bhagat, learned Advocate, on behalf of the Appellants and Shri S.C. Pushkarna, learned D.R., for the Revenue. The Dy. Commissioner has rejected refund claim filed by the Appellants on the ground that the duty of customs was paid on 2.11.1998 whereas refund claim was filed on 25.6.1999 which is beyond the period of 6 months specified in Section 27 of the Customs Act. I find that as contended by the learned Advocate for the Appellants the refund claim was initially filed on 16.4.1999 on the ground that they were not required to pay Special Additional duty under Section 3A of the Customs Tariff Act. The Department returned the claim to the Appellants under letter dated 1.5.1999 as all the documents required with the refund claim were not submitted. They resubmitted the refund claim only on 25.6.1999 by which time limit for filing refund

claim had expired. I find substance in the submissions of the learned advocate that time limit should be computed from the date on which refund claim was initially filed and not from the date on which the refund claim after removing defects was re-submitted. It is not disputed by the Revenue that initial refund claim was filed by the Appellants on 16.4.1998 (sic) in respect of customs duty paid by them on 2.11.1998 as such the Appellants have filed the refund claim within the period of 6 months from the date of payment as such the refund claim is not time barred.

This was the view expressed by the Tribunal in the case of CCE, Bolpur v. Bhandiguri Tea Estate wherein it was held that "first staking of refund claim which may not be in proper format has to be considered as the date for the purpose of limitation." The Commissioner (Appeals) has also given his finding that as the duty was paid by the Appellants as per the assessment on the Bill of Entry which was not challenged by them the refund is not maintainable in terms of Supreme Court decision in the case of CCE, Kanpur v. Flock India Pvt.

Ltd. . I find that no show cause notice was issued to the Appellants for denying refund claim on this ground at all nor Dy.

Commissioner has dealt with the same in the Adjudication Order. So no opportunity has been afforded the Appellants to deal with this point.

The refund claim is not deniable to the Appellants on the ground of time limit.