

Sona Udyog Vs. Cce

Sona Udyog Vs. Cce

SooperKanoon Citation : sooperkanoon.com/28574

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-23-2002

Reported in : (2002)(84)ECC328

Judge : K Usha, S T C.

Appellant : Sona Udyog

Respondent : Cce

Judgement :

1. This is an appeal at the instance of the assessee challenging the stay order dated 31.8.95 passed by the Commissioner of Central Excise (Appeals) Bhopal rejecting the appellant's claim for refund of an amount of Rs. 27,686 2. The original authority rejected the claim for refund on the ground that the appellant had not complied with the provisions of erstwhile Section 12A, 12B and 11D and the refund claim was hit by the provisions of Section 11B. The Commissioner (Appeals) took the view that the appellant had neither filed any documentary evidence showing that they had not passed on the incidence of duty paid by them to the customers before the lower adjudicating authority or during the appeal proceedings. In the absence of such evidence the appellants have not fulfilled the conditions laid down under Section 11B and, therefore, not entitled to any relief.

3. The appellant's claim for refund was initially rejected under order in original dated 26.6.92 on the ground that the clearances were made as per approved price lists. The above order was set aside in appeal at the instance of the assessee and

the matter was remanded for de novo examination holding that the approval of classification list or price list cannot act as bar for demand under Section 11A or for filing a refund claim under Section 11B. After the remand the original authority passed order dated 11.5.95 rejecting the claim for refund holding that the assessee had not satisfied the provisions contained under Section 11D. The appellant contended before us that the question of unjust enrichment would not be applicable in the present case and therefore, there was no justification in rejecting the claim on the basis of Section 11B. We find no merit in this contention. The appellant's claim for refund is on the basis of claim for abatement of duty on equalized freight/delivery charges. Going by the provisions contained under Section 11B the application for refund should be accompanied by such documentary or other evidence including the documents referred in Section 12A to establish that the amount of duty of excise in relation to which such refund was claimed was collected from or paid by him and the incidence of such duty had not been passed on by him to any other person. No such evidence has been adduced by the assessee in this case.

It has not discharged its burden to show that the excess duty paid has not been passed on to the customers. In the light of the above, the impugned order is only to be upheld. The appeal stands dismissed.

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