

Shanti Kumar Vs. Cce

Shanti Kumar Vs. Cce

SooperKanoon Citation : sooperkanoon.com/28811

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-29-2002

Reported in : (2003)(85)ECC44

Judge : S Kang

Appellant : Shanti Kumar

Respondent : Cce

Judgement :

1. Appellant filed this appeal against the order-in-appeal passed by the Commissioner (Appeals).
2. The Commissioner (Appeals) in the impugned order held that the appeal filed by Shri Shanti Kumar, present appellants, is not maintainable.
3. Brief facts of the case are that M/s. Maruti Udyog Ltd., manufacturer of motor vehicles, filed refund claim before the competent authority for refund of Rs. 72,168.00 in view of Notification 6/2000-CE dt. 1.3.2000 which provides concessional rate of duty for cars for physically handicapped persons. The refund claim was rejected by the Dy. Commissioner of Central Excise on the ground that car was sold to physically handicapped persons whereas the Maruti Udyog Ltd. has cleared the car on full payment of duty and as M/s. Maruti Udyog Ltd. recovered the amount of duty from their customers, the principle of unjust enrichment is applicable as the burden of duty has been passed on to the

customers.

4. This order, passed by the Dy. Commissioner, was accepted by M/s.

Maruti Udyog Ltd. and no appeal was filed by them. Against this order, Shri Shanti Kumar, the present appellant, filed the appeal before the Commissioner, who dismissed the same.

6. The contention of the appellant is that the appellant is an aggrieved person and, therefore, he is entitled to file the appeal against the order passed by the Dy. Commissioner as the refund claim by M/s. Maruti Udyog Ltd. is a different man for him. The appellant relied upon the decision of the Tribunal in the case of Northern Plastics Ltd, v. Hindustan Photo Film Mfg. Co. Ltd. and Ors., 1997 (58) ECC 59 (SC): 1997 (19) RLT 5 (SC).

7. The contention of the revenue is that the present appellant, Shri Shanti Kumar never filed any refund claim before the revenue authority.

Therefore, the person is not an aggrieved person against the order passed by the Dy. Commissioner rejecting the refund claim filed by M/s.

Maruti Udyog Ltd. The contention of the revenue is also that Section 11B of the Central Excise Act provides that any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Commissioner before the expiry of six months from the relevant date. As the present appellant has not filed any refund claim within the period of six months, his request for refund after six month as provided under Section 11B of the Act is not maintainable. In this case, the admitted fact is that the present appellant had never approached the excise authorities for refund of excise duty. Section 11B of the Central Excise provides that any person claiming refund of any excise duty may make an application for refund of such duty to the Assistant Commissioner before expiry of six months from the relevant date and the application shall be accompanied with such documentary or other evidence as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is 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.

8. In the present case refund claim was filed by Maruti Udyog Ltd. and after issuance of show cause notice, the claim was rejected. M/s.

Maruti Udyog Ltd. accepted the order passed by the Dy. Commissioner and no appeal was filed by them. Against this order, the present appellant filed the appeal.

9. The present appellant, for the first time, claimed the refund before the Commissioner (Appeals) by way of filing an appeal against the adjudication order passed and no refund claim was filed by M/s. Maruti Udyog. As per provisions of Section 11B of Central Excise Act, which provides the procedure for filing the refund claim, which also provides the period of limitation, by the present appellant by filing the appeal against the order to which he is not a party, wants to circumvent the procedure laid down under Section 11B of the Central Excise Act, which is not permissible. The appellant relied upon the decision of the Hon'ble Supreme Court in the case of Northern Plastics Ltd, (supra).

The Hon'ble Supreme Court in this case held that in order to earn a locus standi as a 'person aggrieved' as provided under Section 129 of the Customs Act, it may not be shown that such a person aggrieved, being a third party, has a direct legal interest in the goods involved in the adjudication proceedings.

10. The ratio of the above decision of the Hon'ble Supreme Court is not applicable to the facts of the present case. As the present appellant had not filed any refund claim within the period provided under Section 11B of the Central Excise Act and also not followed the procedure laid down under the Section for claiming the refund, I find no infirmity in the impugned order and reject the appeal.

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