

Commissioner of Customs and Central Vs. B.G. Shirke Construction

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-12-2003

Judge : S T S.S., K Kumar

Appellant : Commissioner of Customs and Central

Respondent : B.G. Shirke Construction

Judgement :

1. When this stay application was called, the advocate for the respondents submitted a copy of letter addressed to Deputy Commissioner, Group V A, New Customs House, Mumbai, by which they intimated that they were withdrawing their claim of refund unconditionally and requested for closing of the matter.

2. The JCDR for Revenue pointed out that this was a case of deliberate fraud and mis-representation in obtaining a favourable order from Commissioner (Appeals) by submitting incorrect letters showing that refund applications were made to the proper officers, whereas in fact the Customs house records do not show any such letter to have been received.

3. Photocopies of the two letters in question were produced by the Ld.

JCDR for perusal of the Bench. It was submitted that a perusal of the receipt stamps on these letters would show that a beneficial order has been obtained from Commissioner (Appeals), by presenting to him a letter, which shows the stamp of receipt by the refund section, which was not in use during the relevant period.

4. We have considered the rival submission and find that there is force in the arguments of JCDR. However, as the respondents have given a letter dated 13th February 2003 to the Customs house withdrawing their claim for refund unconditionally requesting for closing of the matter, we would in the facts of the case set aside the order of the Commissioner (Appeals) which appears to have been obtained by presenting a copy of a letter not on Custom House records and remand the matter back to the original authority in the Customs house to deal with the request for closure of the refund claim. The other issue of incorrect/false documents, if any, presented and consequences thereof under provisions of Section 134 of the Customs Act 1962 and any other action as the Revenue may be advised are left open for Revenue to pursue.

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