Commissioner of Central Excise and Vs. Bil Metal Works

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-13-2003

Judge : S T C.

Appellant : Commissioner of Central Excise and

Respondent : Bil Metal Works

Judgement :
1. None is present for the Respondent. Heard Shri Uma Shankar, learned S.D.R. for the Departments. This is an appeal filed by the Department.

In the grounds of appeal the applicant Commissioner has stated as follows:- "In the instant case, the assessee had executed the B-11 bond dtd.

7.8.91 for the sum of Rs. 3 lacs backed by a cash security of Rs. 30,000/-, for the release of the seized tempo, which indulged in carrying contraband excisable goods. The Assistant Commissioner had released the said tempo against the said B-11 bond, while getting the release of the said tempo provisionally, the assessee agreed to fulfil the terms/conditions of the said bond.

Therefore, in view of the above, the Commissioner (Appeals) has erred in holding that it was not correct to appropriate the refund due to the assessee; besides the Jurisdictional Assistant Commissioner had specifically held that if the assessee had executed B-11 bond for the provisional release of seized tempo, they are estopped thereafter from disassociating themselves from that tempo, when they had executed the said bond instead of that being executed by the tempo owner. Therefore, due to the breach of the terms and conditions of the said bond by the assessee, the Assistant Commissioner had correctly enforced the said bond, and had correctly appropriated the amount of Rs. 29,300/- to be refunded to the assessee." 2. I find force in the contention of the prayer made by the applicant Commissioner. As such, I set aside the impugned order in appeal and remand the case back the successor Commissioner (Appeals) for deciding the case afresh according to law, after granting a reasonable opportunity of hearing to both sides.