

Commissioner Of Central Excise Vs. Teg'S Masarado Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-02-2003

Reported in : 156(2003)DLT926

Judge : P Bajaj

Appellant : Commissioner Of Central Excise

Respondent : Teg'S Masarado Ltd.

Judgement :

1. In this appeal, the Revenue has questioned the validity of the impugned order-in-appeal dated 8-1-2003 vide which the Commissioner (Appeals) had affirmed the order-in-original dated 30-6-1995 of the Asstt. Commissioner allowing refund of Rs. 13,640.31.

2. The respondents are a 100% EOU. They filed a refund claim of the above said amount on the ground that they have recovered the duty from their customers @ 5% as per Notification No. 101/93-C.E., dated 27-12-1993 read with Notification No. 32/92-Cus., dated 1-3-1992, but had actually paid duty @ 10% adv. They had claimed the refund of 5% extra duty paid by them. The adjudicating authority allowed their refund by accepting their ground which was substantiated by them by producing the copies of their books of account. The Commissioner (Appeals) has affirmed that order of the adjudicating authority.

3. I have heard both sides and perused the impugned order-in-appeal.

The Commissioner (Appeals) has recorded specific finding that the respondents had charged the duty from the customers, only @ 5% whereas they paid the duty at 10%. They had claimed the refund of the extra duty of 5% which they paid. From the record, I find that not an iota of evidence has been adduced by the Department to show that the duty charged from the customers by the respondents, was not @ 5% but 10%.

Even in the show cause notice, it had not been so alleged, as is evident from the perusal of the impugned order itself. Therefore, I do not find any sufficient ground to disagree with the findings of fact recorded in the order-in-original, as well as in the impugned order-in-appeal that the respondents have only charged duty @ 5% from the customers whereas they had paid @ 10%. That being so, they are entitled to the refund of 5% extra duty paid by them. The impugned order of the 'Commissioner (Appeals), in my view, does not suffer from any illegality and the same is upheld.⁴ Consequently, the appeal of the Revenue is dismissed being without any merit.

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