

C.C.E. vs. B.H.E.L.

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SooperKanoon Citation : sooperkanoon.com/31627

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-18-2003

Judge : S Kang, a T V.K.

Appellant : C.C.E.

Respondent : B.H.E.L.

Judgement :

1. Revenue filled this appeal against the order-in-appeal passed by the Commissioner (Appeals), whereby the refund claim was allowed on the ground that the goods imported by the respondents are entitled for the benefit of notification no. 35/79 Cus dated 15.2.79.

3. Brief facts of the case are that the respondents made import of rotor shaft and filled a bill of entry claiming classification under heading 8463.00 of Customs Tariff. The goods were assessed accordingly and the respondents paid duty.

4. Thereafter, respondents filed a refund claim before the Assistant Commissioner of Central Excise on the ground that the goods, in question, were entitled for the benefit of notification no. 35/79-Cus.

5. The refund claim was rejected by the adjudicating authority.

However, the Commissioner (Appeals) allowed the refund claim.

6. The contention of the revenue is the imported goods were assessed under heading 8463.00 of Customs Tariff as claimed by the respondents.

The respondents had not challenged this order of assessment passed by the customs authorities. Respondents filed a refund claim with the Central Excise authorities claiming the refund of customs duty. In the refund claim, the respondents claimed the benefit of notification no.

35/79. The contention of the revenue is that such assessment order was not challenged by the respondents, therefore, the refund claim is not maintainable.

8. The contention of the respondents is that the issue whether the assessment can be challenged in refund claim and is pending before the Larger Bench of the Tribunal reported as 2003 (56) RLT 652. Respondents also pleaded that the goods, in question, are not classifiable under heading 8463 of Customs Tariff.

9. We find that the customs authorities assessed the goods under heading claimed by the respondents and the respondents accepted the assessment order and paid duty.

10. The respondents' plea that the issue whether the assessment can be challenged in the refund claim pending before the Larger Bench, is also without any merit. In the case, relied upon by the respondents, the issues whether the decision of the Hon'ble Supreme Court in the case of C.C.E. vs Flock (India) Pvt. Ltd. 11. We find that on merit, the goods were assessed under tariff heading 8463 by the customs authorities and the respondents accepted this assessment and paid duty. This order was appealable order and respondents filed no appeal against this order. Now the respondents challenged the classification of the imported goods as assessed by the customs authorities before the Assistant Commissioner of Central Excise in refund claim, which is not permissible. Heading 8463 of Customs Tariff is not covered under the notification no. 35/79-Cus, therefore, the goods falling under this heading are not entitled for the exemption provided under this notification. In view of these circumstances, the appeal is allowed and the refund claim, filed by the respondents, deserves to be rejected.