Omni Commerce Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jul-18-2003

Reported in : (2003)(110)LC483Tri(Chennai)

Judge : S Peeran

Appellant : Omni Commerce

Respondent : Cc

Judgement :

1. This appeal arises from Order-in-Appeal No. C. Cus No. 258/02 dated 25.6.2002, by which the claim of consequential relief of refund as a result of succeeding before Commissioner (Appeals) in the order-in-appeal No. 557/2000 dt. 23.8.2000, was not accepted and the authorities held that the refund claim is time barred.

2. Ld. Counsel, Shri Murugappan submits that the duty was paid as a consequence of the order passed by the Deputy Commissioner in order in original and the said order was appealed before the Commissioner (Appeals), which was set aside by Commissioner (Appeals) and hence as a consequence the refund is required to be made. However they had filed an application bringing out the details of the proceedings and the claim made by them as not time barred but it to be granted as a consequential relief. Ld. Counsel submits that this very Bench in the case of Southern Switch Gear Ltd. v. CCE, Chennai, , clearly laid down after examining the cases on record that the refund is required to be made as a

consequential relief when the appellants contesting the same in the appeal He also relies on the judgment rendered in the case of General Engg. Works v. CCE, reported in 1999 (III) ELT 86 (T) : 1999 (83) ECR 155 (T), which clearly laid down that the provisions of time limit under Section 11B is not applicable when the matter was pending before the Appellate Forum and in pursuance of that order the refund claim will not be hit by the doctrine of unjust enrichment. Ld. Counsel further relies on the judgment rendered in the case of Kota Oxygen v. CCE, Jaipur , wherein also a similar view has been expressed in the light of the Apex Court judgment rendered in the case of Mafatlal Industries v. UOI the judgment rendered in the case of General Engg. Works v. CC (supra) and Wazir Steel Industries v. Collector reported in 1997 (85) ELT 45.

3. Ld. DR reiterates the department's contention and submits that the lower authorities have given findings to the fact that the application filed as a consequence of succeeding before the Commissioner (Appeal) is recorded from the date of the application and if that is taken into consideration, then the application filed will be beyond 6 months.

Hence, the appellant is not eligible for the consequential refund, as the refund claim is time barred.

4. On a careful consideration of the submissions made by both sides, I notice that the argument raised by the Ld. Counsel has strong force.

The duty was deposited as a consequence of order-in-original passed by the Dy. Commissioner and the same was appealed. The appellants succeeded before the Commissioner (Appeals) and the authorities should refund the money which had been deposited as a consequence of the order-in-original. As held by the Tribunal in the case of General Engg.

Works (supra), the deposit made is not hit by time bar under Section 11B of CE Act and the said provision is not applicable. The pari materia Section 11B of CE Act is Section 27 of the Customs Act and the same ratio will apply to this case also. In the light of the citations referred to in the case of Southern Switch Gear Ltd. v. CCE, Chennai (supra) by this Bench, the impugned order is set aside and the appeal is allowed with consequential relief. The appellants are entitled to refund claim as a consequence of their succeeding before the Commissioner (Appeals), the claim is not hit by time bar. Appeal is allowed with consequential relief.