C.C.E. Vs. Mek Engineering and Construction

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SooperKanoon Citation : sooperkanoon.com/32558

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-07-2003

Reported in : (2003)(158)ELT157Tri(Mum.)bai

Judge : A Wadhwa, S T S.S.

Appellant : C.C.E.

Respondent : Mek Engineering and Construction

Judgement :
1. The short point, involved in the present appeal by Revenue, is as to whether impugned order passed by the authorities below granting refund of duty to the respondent is in accordance with the law or not.

Commissioner (Appeals) vide his impugned order has rejected the application filed by the Revenue on the grounds that Boards Circular Number 53/90, dated 26-9-98 is very relevant, vide which the Board has observed that earlier Telex instructions dated 24-8-90 withdrawing instruction vide Telex dated 21-3-1990 inter alia mentions and lays down that wherever duty was collected from customers, refunds should not be given. This Telax dated 26-9-1998 is reported to be prospective.

It mentions that no action need to be taken to recover the refund already allowed by the competent authorities unless such refund was otherwise considered erroneous. The present refunds being given by cheque therefore cannot be re-opened. Revenue does not dispute the above circular of the Board but submits that the said Board circular was controversial and as such should not be followed by Commissioner (Appeals). It has been further contended that the provisions of Section 11B having being amended with effect from 20-9-1991 would be applicable, even in respect of the claim settled and sanctioned.

2. We, however, find that the Commissioner (Appeals) has acted in terms of the Board circular, it is well said law that such circulars are binding upon the Central Excise Authorities. The refund claim was sanctioned and also paid to the respondent well before the amendment of the provision of Section 11B. As such we do not find and infirmity in the view taken by the Commissioner (Appeals). Accordingly the appeal filed by the appellant is dismissed.