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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-21-2004

Reported in : (2004)(93)ECC667

Judge : S T S.S.

Appellant : Central Engineering Corporation

Respondent : The Commissioner of Central

Judgement :

1. Appellants had filed certain rebate claims, which were rejected. The Commissioner (Appeals) vide his No. 830/2000/Commr(A)/Raj dated 10/11/2000 allowed the appeal. Consequently the original authority took up the verification exercise and granted a claim of Rs. 1,408/- out of total claim of Rs. 56,837/-. In appeal, the Commissioner (Appeals) held as :- "The issue to be decided in the present appeal is circumscribed to the fact whether the Deputy Commissioner, Central Excise Division-I, Rajkot was proper or not, in rejecting the substantial portion of the refund claim, in backdrop of the circumstance when this authority has already allowed the previous appeal of the appellant vide this office Order-in-Appeal No. 830/200l/Commr.(A)/Raj dated 10.11.2000.

I find that, in the instant case the appellants have taken exception to the lower Adjudicating Authority's move in verifying the document after the issue being allowed by this authority. However, I find that observation the Adjudicating Authority at para 3 and 4 of the impugned order supra are not misplaced.

Now reverifying back to the protestation of the appellants that the issue was already decided by the authority. I find that this authority vide Order in Appeal No. 830/2000/Commr(A)/Raj has only decided whether the appellants was required to take permission of the authority under Rule 12 (1) of Central Excise Rules, 1944 and not other nitty-gritty as can be gathered from the penultimate para of Order-in-Original No. 202 Refund, 1998. In the said para, it has been dearly stated merits/genuinity of the documents pertaining to the rebate claims has not been considered, so it was open for the lower Adjudicating Authority to delve into the same before sanctioning refund claim. I also find that it has been categorically mentioned by the lower Adjudicating Authority to the appellants to fulfill the deficiency by 06/06/2001 which they did not care to clarify and ipso facto I find that lower Adjudicating Authority in passing the record with the material available with on records.

In view of the above, I do not see any impropriety in the action of lower Adjudicating Authority in calling for the appellants objection, as to why their refund claim should be sanctioned in toto. I also find that, on being no responded, by the appellants, the lower Adjudicating Authority was not amiss in sanctioning the refund amount it deemed fit. In view of the above vital facts, the defence of the appellants is of no avail.

a) The plea that the original authority could not have re-opened the determination of the quantum of claim on merits since the Commissioner (Appeals) order dated 10/11/2000 was not challenged in appeal has been dealt with adequately in the impugned order. When earlier claims were rejected only on the ground if 'permission under Rule 12 (1)', the authority complaint to entertain the claim was required to go and verify the claim and sanction only such amounts that are found to be eligible.

b) The grounds taken that Deputy Commissioner had not followed the principles of natural justice are rejected when it is found from the impugned order and the original order that the Deputy Commissioner had called for and sought comments from the appellants, on the findings of his verification which were not challenged. Opportunity granted and not availed cannot be denial of natural justice.

c) The grounds even now before the Tribunal or before the Commissioner (Appeals) also do not challenge the findings of quantification arrived at by the original authority. The orders of the two lower authorities are therefore required to be confirmed.