

Commissioner of Customs and Vs. Sudarshan Tex-port (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-21-2004

Judge : S T C.

Appellant : Commissioner of Customs and

Respondent : Sudarshan Tex-port (P) Ltd.

Judgement :

1. Heard both sides. The Commissioner (Appeals) has allowed refund to the respondents amounting to Rs. 52,913/-and Rs. 49,223/- respectively.

The relevant notification allows such refunds subject to the condition that drawback is not availed by the claimant. It is the case of the applicant Commissioner that the respondents had filed drawback shipping bills and they have not shown any proof of not receiving drawback in respect of the impugned goods. On the other hand Smt. S.S. Mani Prakash, Ld. Consultant, appearing for the respondents states that it is a fact that drawback shipping bills were filed but no drawback has been claimed or received from the department. She further states that no drawback can be claimed unless the concerned Range officials give a certificate regarding non availment of modvat credit, which has not been obtained or furnished. As such, she states that it is clear that the respondents have not claimed or received any drawback. The department has also not produced any proof that any drawback has been sanctioned to the respondents. Under the circumstances, I am of the view that the Commissioner (Appeals) has correctly allowed the refunds and the impugned orders do not call for any

interference. As such, the department's appeals are rejected.

2. The two cross objections filed by the respondents are also disposed off.

3. Heard both sides. The original authority had allowed refund of Rs. 7,82,691/- to the respondents but adjusted the same against other demands in respect of which appeals were pending before the Tribunal.

The Commissioner (Appeals) has decided against such adjustments and the respondents have subsequently received the refund. The present appeals by the applicant Commissioner are against the said decision of the Commissioner (Appeals). In the meantime, the appeals against other demands which were pending in the Tribunal has since been decided in favour of the respondents vide Order No.C-I/1512/WZB dated 23/07/2003 & C- II/2185/86/WZB/2003 dated 28/08/2003.

4. As such no amount is payable by the respondents and the question of adjusting the refund amount has become irrelevant. These appeals are, therefore, dismissed as infructuous.

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