

Commissioner of Central Excise Vs. Krishnonics Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-23-2004

Reported in : (2005)(180)ELT406Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Krishnonics Ltd.

Judgement :

1. Revenue is in appeal against the CCE (Appeals) having held that the Respondent should submit an application for remission of duty of Rs. 7 lakhs to the Commissioner of Central Excise, Ahmedabad-II. Who after satisfying himself about the fire incident, in the respondents factory on 8-1-1996, and ascertaining the goods lost in the accident, remit the duty; it was further ordered that if the said Commissioner is not satisfied and reject the permission applicable then a fresh notice of duty demand could be issued by Commissioner.

2. Revenue seeks in the appeal that the CCE (Appeals) ought to have ordered that in the eventuality of remission of duty been granted the SCN would stand discharged but if the remission is disallowed then SCN will be clearly adjudicated since a fresh SCN, if issued after application of remission of duty been disallowed would be time barred.

It is further contented in the grounds taken in appeal by Revenue that CCE (Appeals) ought to have ordered for revival of the SCN already issued instead of ordering for issue of a fresh SCN.3. After hearing both sides and considering the issues involved, it is found demands of duty would arise as per proviso to Rule 49(1) only after Remission is considered and final orders thereon are arrived. Any notice of duty demand could be issued within six months of the rate of duty payable, which in this case would be as per Rule 9A(5) of the Central Excise Rules, 1944, read with Section HA(3)ii(c) as applicable during that period, only after the remission request rejection orders are final; duty demands made earlier to that would be a presumption that Remission could not be eligible. Demands cannot be made on presumptions. No infirmity is thus found in CCE (Appeals) act the same is confirmed. Appeal disposed in above terms.

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