Hotline Teletubes and Components Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-31-2004

Reported in : (2005)(98)ECC276

Judge : P Bajaj

Appellant : Hotline Teletubes and Components

Respondent : Commr. of C. Ex.

Judgement :

1. In this appeal which has been filed by the appellants against the impugned order-in-appeal passed by the Commissioner (Appeals) who has affirmed the order-in-original of the adjudicating authority passed in the de novo proceedings after the remand of the matter by the Tribunal, the controversy centres round the question is, as to whether the appellants are entitled to claim the refund of the unutilised credit balance in respect of the picture tube exported prior to the issuance of the Notification No. 6/97-C.E. (N.T.), dated 1-3-1997, when claim for the refund has been lodged by them after 1-3-1997.

2. I have heard both sides and gone through the record. There is no dispute regarding the facts leading to the filing of the refund claim filed by the appellants, The appellants exported the picture tubes in respect of which the Modvat credit available to them was of Rs. 5,45,784/-. They filed the refund claim for this amount on 19th March, 1997 due to the Budgetary changes as a result of insertion of Rule 57F(17) vide Notification No. 6/97-C.E. (N.T.), dated 1-3-1997. The authorities

below have rejected the refund claim on the ground that it was lodged after the issuance of the Notification, although the goods were exported prior to that. The Tribunal in the appellants' own case earlier had endorsed the view of the lower authorities, but when that view of the Tribunal was followed in the case of Samtel India Etd. v.CCE, Jaipur [2000 (122) E.L.T. 596 (Tri.) - 2000 (41) RLT 215], the same was challenged before the Apex Court and the Apex Court had reversed that view of the Tribunal as reported in [2003 (155) E.L.T. 14 (S.C.)], and observed that the refund was available to the assessee even if filed after 1-3-1997 - the date of the issuance of the above said notification, when the export of the goods was made prior to that.

3. The Commissioner (Appeals) has not followed the above said judgment of the Apex Court on the plea that in the appellants' own case, the Tribunal took the contrary view. But he has lost sight of the fact that while expressing the contrary view in earlier proceedings, the Tribunal did not reject the refund claim of the appellants, rather remanded the matter to the adjudicating authority for fresh decision. It can hardly be disputed that the judgment of the Apex Court rendered on a particular issue is binding on all the authorities subordinate to it.

Therefore, the Commissioner (Appeals) was duty bound to follow the Apex Court's judgment rendered in the above said case and could not by-pass the same for disallowing the refund claim of the appellants.

4. In view of the Apex Court judgment, referred to above, the appellants are entitled to the refund of the amount, although filed after 1-3-1997 as the export of the goods was made by them prior to that. Consequently, the impugned order of the Commissioner (Appeals) is set aside. The appeal of the appellants is allowed with consequential relief, if any, permissible under the law.