

Cce Vs. Superintending Engineer, Tnseb

Cce Vs. Superintending Engineer, Tnseb

SooperKanoon Citation : sooperkanoon.com/37193

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-25-2004

Reported in : (2005)(100)ECC106

Judge : A T V.K., P Bajaj

Appellant : Cce

Respondent : Superintending Engineer, Tnseb

Judgement :

1. This Order will dispose of the Reference Application moved by the Revenue under Section 35-G(1) of the Central Excise Act.

2. The facts giving rise to the above-said application may briefly be stated as under: 3. The respondents are manufacturers of excisable goods falling under Sub-heading 7309.90 (prior to 1.3.88). The classification list No.59/87 filed by them was approved by the Assistant Commissionerw .e.f.

27.5.87 indicating that 5 items manufactured by the unit as non-excisable, as no manufacturing activity in respect thereof took place. Thereafter, the respondents lodged refund claim of Rs. 6,43,544.60 on 4.10.1988 for the duty paid on those five items on the ground that the classification list was received by them on 23.9.80 and that the duty was paid by them under protest. The Assistant Commissioner initiated proceedings for the rejection of the refund claim as the respondents did not follow the procedure prescribed under Rule 233-B of the

Rules. After adjudication, the Assistant Commissioner sanctioned refund of Rs. 1,77,081.31 P but rejected the rest of the claim of Rs. 4,08,898.30 as time barred under Section 11-B of the Act vide Order-in-Original No. 3/90 dated 31.3.90. The Assistant Commissioner also rejected the refund claim of Rs. 29,516 on the ground that the items representing this amount were not approved as non-excisable.

4. The respondents thereafter filed an appeal against the above-said Order before the Commissioner (Appeals) who remanded the case back to the Assistant Commissioner with the observations that the protest letter was filed by the respondents and classification list was approved by the Department and as such, the refund claim should be re-considered. Against that Order of the Commissioner (Appeals) dated 31.8.90, the Revenue filed an appeal before the CESTAT who rejected the appeal vide Final Order No. 781/98-B1 dated 1.5.98. The Tribunal in that Order has observed that Rule 233-B is a merely procedural in character and not mandatory and as such, non-observation with the provisions of this Rule, did not debar the respondents from filing the refund claim after the expiry of the statutory period of six months.

5. We have heard both the sides and in our view, the following question of law arises out of the Order of the Tribunal dated 1.5.98: "Whether the provisions of Rule 233-B for lodging the protest while making payment of duty are procedural or mandatory?" 6. This is a substantial question of law and deserves 'to be referred to the Hon'ble High Court for decision. We allow the Reference Application of the Revenue and accordingly the reference is made to the Hon'ble High Court for their decision on the above question of law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com