

Cce Vs. Sunrise Structurals and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-09-2004

Reported in : (2005)(99)ECC241

Judge : P Bajaj, M T K.C.

Appellant : Cce

Respondent : Sunrise Structurals and

Judgement :

1. In the above-captioned appeals, the controversy centres around the question as to whether the respondents are entitled to the refund of duty paid by them on the structure of iron and steel or not.

2. The facts are not much in dispute. The respondents filed classification list showing classification of their goods i.e.

structures of iron and steel under Chapter 73 and sub-heading 7308.20 of the CETA. Their classification list was approved by the A.C. vide order dated 12.9.89 and the respondents paid duty under the said order on the parts of structure. However, it is only later on, on 18.12.89, they made a representation to the Assistant Commissioner that their goods were not chargeable to duty. Their representation was then followed by the refund claim of duty, which was filed on 28.12.89. The matter has been received back from the Apex Court for deciding it afresh after going into the question as to whether the goods of the respondents

are chargeable to duty or not.

3. The learned SDR has, however, stated that question regarding excisability and durability of the goods in question is not required to be gone into as the refund claim of the respondents on the face of it stands barred by the ratio of the law laid down by the Apex Court in the case of CCE, Kanpur v. Flock (India) Pvt. Ltd., 2000 (71) ECC 4 (SC): 2000 (120) ELT 285 for having not challenged the order of the A.C. regarding assessment.

4. We have gone through the file and in our view, the contention raised by the SDR deserves to be accepted. It has not been disputed before us that the order of the A.C. approving the classification list of the respondents vide order dated 12.9.89 under which duty was paid by them, was never challenged by the respondents. That order, therefore, has already attained finality. In CCE, Kanpur v. Flock (India) Pvt. Ltd. (Supra), in similar circumstances, the Apex Court has observed that where an adjudicating authority has passed an order which is appealable under the statute and the party aggrieved did not choose to exercise the statutory right of filing an appeal it is not open to the party to question the correctness of the adjudicating authority subsequently by filing a claim for refund on the ground that the adjudicating authority had committed an error in passing his order. This very law has been reiterated by the Apex Court subsequently in the case of Priya Blue Industries Ltd. v. CC (Preventive), 2004 (96) ECC 217 (SC). The case of the respondents stands squarely covered by the ratio of law laid down by the Supreme Court in the above referred two cases as the respondents did not challenge the assessment order of the A.C. under which duty was paid by them. In the refund claim proceedings, they cannot challenge the correctness of that order and as such their refund claim are liable to be dismissed on this short ground.

5. Consequently, the impugned orders in all these appeals are set aside. The appeals of the Revenue are allowed with consequential relief, if any, permissible under the law.