Autolook Industries Vs. Cc

Autolook Industries Vs. Cc

SooperKanoon Citation : sooperkanoon.com/37568

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-30-2004

Judge : M T K.C.

Appellant : Autolook Industries

Respondent : Cc

Judgement :
1. Shri A K Mishra, ld. Consultant pleaded that the Commissioner (Appeals) has rejected their refund claim as time barred. The refund application was filed on 12.4.2004 whereas the duty was paid on 12.10.2000. Therefore, the application was held to have been filed beyond the period of 6 months from the date of payment of duty. Ld.

Consultant pleaded that the refund claim was filed within a period of six months. Four counting the period day of payment of duty has to be excluded. He relied on the following decisions of the Tribunal:-Siemens Telecom Ltd. v. CC, New Delhi (2000 (115) ELT 160 (Tribunal) (2) J.B.A. Printing Inks. v. CC, Bombay (1986 (25) ELT 551 (Tribunal) He also referred to Section 9 of the General Clauses Act, 1897 and Section 12 (1) of the Limitation Act, 1963 and pleaded that the refund claim has been filed in time if the date of payment of duty is excluded in computing the period of six months.

2. Shri Bipin Verma, ld. JDR has no objection in remanding the case back to the original authority for taking a decision on merit. The date of payment of duty if

excluded then the refund claim is filed in time.

3. Considering the arguments of both the sides, I find that the Tribunal has already decided the issue that date of payment of duty is to be excluded in computing the period of limitation. Therefore, the refund claim was filed in time. The order of the Commissioner (Appeals) is, therefore, set aside and the case is remanded back to him for examining the appeal on merits and pass a fresh order on merits of the case.