

Commissioner of Customs Vs. Spice Communication Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-07-2005

Reported in : (2005)(100)ECC444

Judge : S Kang, Vice, M T K.C.

Appellant : Commissioner of Customs

Respondent : Spice Communication Ltd.

Judgement :

1. Heard both sides. The revenue filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals).

2. Brief facts of the case are that the appellant made import of certain goods and claimed the benefit of Notification No. 17/2001-Cus.

The assessing authority disallowed the benefit of the notification and passed the assessment order. The present respondent had not filed any appeal against the assessment order and filed a refund claim in which the assessment order was challenged on the ground that they are entitled for the benefit of notification. The Commissioner (Appeals) in the impugned order allowed the appeal filed by the present respondent on the ground that the assessee can challenge the assessment order by filing a refund claim.

3. The contention of the Revenue is that when the assessment order was not challenged, the assessee cannot challenge the assessment order by filing a

refund claim and Revenue relied upon the decision of the Hon'ble Supreme Court in the case of CCE v. Flock (I) Pvt. Ltd., 2000 (71) ECC 4 and in the case of Priya Blue Industries Ltd. v. CC (Preventive), 4. The contention of the present respondent is that the principle of Flock (I) Pvt. Ltd. decision is applicable in respect of Section 11 of Central Excise Act whereas in the present case the refund is filed under Section 28 of the Customs Act and the respondent relied upon the decision of the Hon'ble Supreme Court in the case of Karnataka Power Corporation Ltd. v. CC (Appeals), Chennai, 2002 (83) ECC 518 (SC) : 2002 (143) ELT 482.

5. We find that in the case of Karnataka Power Corpn. (supra) the facts are different. In this case the Hon'ble Supreme Court noticed the fact that while passing the assessment order, the claim of the importer was not considered by the assessing authority, therefore, the matter was remanded to the assessing authority for deciding afresh. In the present case, the claim of the present respondent was considered and declined by the assessing authority, therefore, the ratio of the decision of the Hon'ble Supreme Court in the case of Flock (I) Pvt. Ltd. (supra) is applicable to the facts of the present case.

6. We find that the Hon'ble Supreme Court in the case of Priya Blue Industries Ltd. (supra) held that ratio of the decision of the CCE v. Flock (I) Pvt. Ltd. is applicable to Section 28 of Customs Act also.

The Hon'ble Supreme Court held that once an order of assessment is passed, the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an Appeal that Order stands. So long as the order of assessment stands the duty would be payable as per that Order of Assessment and it cannot be challenged by filing a refund claim. In view of the above decision, we find that impugned order is not sustainable and set aside and the appeal filed by the Revenue is allowed.