Worldwide Commodities Trading Vs. Commr. of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-21-2005

Reported in : (2006)(193)ELT194Tri(Mum.)bai

Judge : K Kumar, S T C.

Appellant : Worldwide Commodities Trading

Respondent : Commr. of Cus.

Judgement :

1. Heard both sides. This appeal relates to importation of white sugar from Mexico, which during the month of June, 1998 was damaged by sea water as a result of a severe cyclone. The damaged cargo was examined and declared unfit for human consumption. The damaged goods were destroyed and it is the claim of the appellants that figures shown in Surveyor's certificate tallies with the certificate of Traffic Manager of Kandla Port Trust. The appellants have also submitted a certificate from the National Insurance Corporation before the original authority, who being satisfied granted refund of duty paid in respect of the damaged bags, which was earlier paid by the importers. On an appeal by the Department against the order of the original authority, the Commissioner (Appeals) has set aside the original order. He has relied on the decision of the Apex Court in the case of CCE, Kanpur v. Flock (India) Pvt. Ltd. stating that the appellants have claimed neither remission of duty under Section 23 nor they have filed any appeal against the initial assessment order.Karnataka Power Corporation Ltd. v. CC as relied in Tribunal's order in the case of TELCO Ltd. v. CC, Mumbai reassessment through a

refund claim. Moreover, in the instance case, there is no dispute that there was a cyclone and the imported goods were damaged, which were not delivered to the appellants. The duty amount, which was paid prior to such damage being caused to the imported goods by the cyclone is required to be proportionately refunded to the appellants to whom the full quantity on which the duty was paid has not been delivered. As such, we set aside the impugned order-in-appeal and remand the matter to the original authority, who shall allow the refund subject to verification of the actual quantity of imported goods lost and damaged in the cyclone. Appeal is thus allowed by way of remand. The operative portion of the order was pronounced in the court on the date of hearing on 21-2-2005.