

Devidayal Aluminium Industries Vs. Cce

Devidayal Aluminium Industries Vs. Cce

SooperKanoon Citation : sooperkanoon.com/41055

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-07-2005

Judge : M T K.C.

Appellant : Devidayal Aluminium Industries

Respondent : Cce

Judgement :

1. The appellants are manufacturers of Aluminium Racks. They initially classified their products under sub-heading No. 7616.90 but subsequently filed a revised classification list on 10.2.95 classifying their products under sub-heading No. 9018.90. After approval of the revised classification, the appellants took credit of Rs. 1,10,317/- in RG-23A, Part-II vide Credit Entry No. 466 dated 16.2.95 for the amount paid in excess. The Range Superintendent advised them to file refund claim for the excess duty paid instead of taking the credit in RG-23 A, Part-II themselves. They accordingly filed a refund claim on 1.8.95 requesting for ex-post facto approval of the claim as they have already credited the amount in RG-23 A, Part-II. The refund claim was rejected by the Asstt. Commissioner vide Memorandum No. 239/95 dated 12.10.95 on the ground that the show cause notice for recovery of the amount in dispute is pending and credit has already been taken by the appellants.

This memorandum was challenged by the appellants before the Commissioner (Appeals), who remanded back the case to the adjudicating authority to re-consider the matter after observing the principles of natural justice. Accordingly,

the adjudicating authority after reconsideration closed the matter on 29.3.96 as at the time of hearing of the case, Shri R.K. Agarwal and Shri R.A. Yadav submitted that since the appellants has already taken the credit and the same is the subject matter of separate proceedings, this case may be closed.

2. Against the Order of Asstt. Commissioner dated 22.11.2000 intimating the appellants that their case was closed on 29.3.96, the appellants filed appeal before the Commissioner (Appeals), who rejected their appeal on the ground that the case was already closed by the competent authority on 29.3.96. In the present appeal, it is pleaded that in 1996, the case was closed on the ground that the appellants has already taken the credit and the same was subject matter of separate proceedings. It was pleaded that under Section 11B of the Central Excise Act, the Asstt. Commissioner should have passed an order either rejecting the refund or allowing the refund. Since the appellants have not withdrawn Page 0167 the refund claim and it was only closed for the time being, as separate proceedings on the same issue were going on therefore, after finalisation of those proceedings, the appellants' right is not extinguished to get the matter re-opened for decision on merit. It was, therefore, pleaded that the adjudicating authority who had closed the case conditionally may be directed to re-open the case and decide it on merits.

3. On behalf of the Revenue, it was pleaded that since the case was closed, therefore, it was finalised and it cannot be again re-opened.

4. I have carefully considered the submissions made by both the sides.

I find that in 1996 the case was closed on the ground that on the same issue separate proceedings were going on and the appellants had already taken credit of the disputed amount. After conclusion of the proceedings, the appellants were directed to return back the disputed amount as they had wrongly taken the credit of their own. The amount has already been given back as per the order of the Tribunal and the penalty has also been paid. Thus their right to re-open the case for decision on merits is not extinguished. I, therefore, accept the contention of the appellants that the case can be re-opened for decision on merits. I accordingly, set aside the order of the Commissioner (Appeals) and direct the adjudicating

authority to consider on merit the refund claim, which was closed on 29.3.96 conditionally, and pass appropriate order as per law.

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