

Sail Vs. Commr. of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Dec-20-2005

Reported in : (2006)(104)ECC604

Judge : J T V.K.

Appellant : Sail

Respondent : Commr. of Customs

Judgement :

1. Heard Shri P.K. Das, Ld. Advocate on the appeal filed by the Appellant. This is a case relating to the refund of Customs Duty. The Page 0605 Appellant has imported Notch Filters in 1992. The assessment was filed by the Customs. They paid the duty and cleared the goods.

They filed the refund claim in 1992 itself which was rejected by the Assistant Commissioner as time barred. He submits that the observation by the Original Adjudicating Authority for their refund claim is time barred is not correct. He, further, submits that the Commissioner (Appeal) cannot take a ground which is not in the original order or in the show cause notice.

2. Heard Shri A. Here, Ld. JDR for the Revenue. He submits that in this case it is fact that the assessment was never challenged by the Appellant. No appeal was filed by the appellant against the assessment order passed by the customs. As such, the assessment has become final and no refund cannot be claimed unless

the assessment is challenged. In view of this he submits that the Commissioner has passed the order correctly and the appeal be dismissed.

3. I have heard both the sides and the submissions made by them. I find that this is a fact that in this case the assessment was not challenged by the appellant. They have filed the refund claim. The Commissioner (Appeal) has rejected their appeal on the basis that the appellant have not challenged the assessment order. As such, the refund claim is not maintainable. I find no infirmity in the order passed by the Commissioner (Appeal) as this view has also been confirmed by various courts and tribunal. In view of this I upheld the order passed by the Commissioner (Appeal) and reject the appeal filed by the appellant.

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