

Commissioner of Central Excise Vs. Goel Polymers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-15-2006

Judge : N T C.N.B.

Appellant : Commissioner of Central Excise

Respondent : Goel Polymers

Judgement :

(ii) The case laws cited in authorisation letter were not got confirmed from respective Commissionerate.

(iii) Due to Government holidays such as Diwali, Id and 5th and 6th November 2005 being Saturday and Sunday.

2. Clearly, the grounds taken are too vague and general and cannot be accepted. That apart, there is no merit in the appeal also. The appeal is directed against the following order of the Commissioner (Appeals): 6.1 I find that the appellant had filed a refund claim claiming refund of service tax amounting to Rs. 1,13,672.00. The claim was rejected by the adjudicating authority but the appellant succeeded in appeal and the refund was allowed on merits vide my Order in Appeal No. 324/RPR-I/2004, dated 24.12.2004. In compliance of the Order in Appeal, the adjudicating authority has sanctioned the said refund under impugned order but adjusted the said refund against a demand confirmed vide his Order in Original No. 176/ST/Adj/2005, dated 6.5.2005.

6.2 In this regard, it is observed that the adjudicating authority sanctioned the refund on 9.5.2005 vide the impugned order and adjusted the amount of refund against the demand confirmed vide Order in Original No. 176/ST/Adj/2005, dated 6.5.2005. He has therefore allowed the appellant only three days time to contest the demand.

6.3 I also find that the appellant had filed an appeal against the Order in Original No. 176/ST/Adj/2005, dated 6.5.2005 passed by the adjudicating authority before this office against which the said refund was adjusted. The said appeal has been disposed off vide Order in Appeal No. 75/RPR-1/2005, dated 30.7.2005 setting aside the said Order in Original dated 6.5.2005 on merits and allowing the appeal. As such, no confirmed demand exists against the appellant.

In the result, the amount of refund sanctioned by the adjudicating authority can not be adjusted and the refund is payable to the appellant. Accordingly, the operational part of the impugned order (Order-in-Original No. 09/ST/Refund/2005, dated 9.5.2005 which is subject matter of this appeal) to the extent it relates to the adjustment of the refund against demand of service tax is incorrect and superfluous and deserve to be set aside.

3. Thus, the refund due to the appellant was adjusted against a demand which remains vacated by the Order dated 30.7.2005 of the Commissioner.

That adjustment cannot survive.

4. In the present appeal, the revenue seeks to point out the error in the Order dated 30.7.2005 of the Commissioner (Appeals). That is not permissible. If the revenue was aggrieved with that order, appeal was required to be filed in time. After that Order-in-Appeal had become final, it is not open to the revenue to challenge it on merits in a collateral proceeding,

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