Cosmic Textiles Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-04-2006

Judge : A Wadhwa

Appellant : Cosmic Textiles

Respondent : Commissioner of Customs

Judgement :

1. The peculiar facts of the case are that on allegations of clandestine removal, the appellants deposited an amount of Rs. 6,10,376/- vide TR-6 challan dated 4-3-2003. Thereafter, a show cause notice was issued to them on 5-5-2003 proposing to confirm the demand of duty of Rs. 5,76,310/-. The said show cause notice is still pending adjudication.

2. However, as the proposed confirmation of demand was lower than the deposited amount by the appellants, they claimed refund of Customs duty of Rs. 31,066/-. The said refund claim stands originally rejected by the Assistant Commissioner on the ground of time bar. However, on appeal against the same, the Commissioner (Appeals) observed that since the show cause notice does not stand adjudicated, the claim is pre-mature and can be refunded only after final decision on the show cause notice. He accordingly, rejected the appeal 3. After hearing the submissions made by both sides, I find that the amount originally deposited by the assessee was in the nature of pre-deposit and was not in the nature of confirmed amount of duty. As such, limitation will not apply to refund of such excess deposit. As regards the claim being premature, it is seen that when

the show cause notice itself demands the lower amount of duty, the adjudicating authority cannot confirm an amount higher than that. As such, the excess amount deposited by the appellants prior to issuance of show cause notice is in any case, liable to be refunded to them.

Accordingly, I set aside the impugned order and allow the appeal with consequential relief to the appellants in accordance with the law.