Padmini Technologies Ltd. Vs. Commissioner of Customs

Padmini Technologies Ltd. Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/44738

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-05-2007

Judge : S Kang, Vice-

Appellant : Padmini Technologies Ltd.

Respondent : Commissioner of Customs

Judgement :
2. The appellant filed this appeal against the order-in-appeal passed by Commissioner (Appeals) whereby the sanctioned refund was ordered to be credited to the Consumer Welfare Fund.

3. The contention of the appellant is that the appellant filed a refund claim on the ground that they had paid excess duty, the same was rejected by the Deputy Commissioner of Customs vide earlier order dated 24-7-02, Against that order, the appellant filed an appeal and Commissioner (Appeals) vide order dated 31-12-03 allowed their appeal by setting aside the adjudication order. The contention is that the Commissioner (Appeals) held that refund claim filed by the appellant ought to have been sanctioned and the amount of refund actually due to the appellant should be computed and worked out by the proper officer after verifying the documents and after deducting the Modvat/other benefit already availed of by the appellant. In pursuance to this order, the Deputy Commissioner, Customs quantified the amount of refund of Rs. 1,04,954/- and ordered that the amount be credited to the Consumer Welfare Fund. Against this order, the appellant again filed appeal and Commissioner (Appeals) vide impugned order upheld the order

passed by Deputy Commissioner of Customs.

4. The contention is that as the Commissioner (Appeals) vide order dated 31-12-03 already allowed their appeal and directed the lower authority to quantify the amount of refund after verification and the lower authority while computing the amount of refund cannot beyond the scope of the order passed by Commissioner (Appeals). Therefore, the order directing the amount of refund credited to Consumer Welfare Fund is not sustainable. The appellant relied upon the decision of the Hon'ble Supreme Court in the case of Union of India v. Kamalakshi Finance Corporation Ltd. is that Hon'ble Supreme Court held that the lower authorities are to follow the order passed by the higher appellate authority, which are binding on them.

5. The contention of the Revenue is that all the refund claims are subject to the principles of unjust enrichment, therefore, the refund claim was rightly credited to the Consumer Welfare Fund. The appellant failed to show that the burden of duty has not been passed on to their customers.

6. I find that the refund claim filed by the appellant was allowed by Commissioner (Appeals) vide order dated 31-12-03. The Commissioner (Appeals) set aside the order passed by the adjudicating authority and held that refund claim filed by the appellant ought to have been sanctioned. However, the amount of refund actually due to the appellant should be computing by proper officer after verifying the documents and also deducting the Modvat/other benefit already availed of by the appellant. This order is not challenged by the Revenue. The Deputy Commissioner in pursuance to this order quantified the amount of refund and ordered that the amount to be credited to the Consumer Welfare Fund. As the Commissioner (Appeals) allowed the appeal filed by the appellant vide order dated 31-12-03 and matter was sent back to the lower authorities for verification of amount only. Therefore, in absence of any challenge to the Commissioner's order whereby the refund was sanctioned the direction of Deputy Commissioner of Customs directing the amount to be credited to the Consumer Welfare Fund is not sustainable. Consequently, the impugned order whereby this finding is upheld is not sustainable. The impugned order where by the amount is ordered to be credited to

the Consumer Welfare Fund is set aside and appeal is allowed.