Commr. of Customs (import) Vs. Ashima Dyecot Pvt. Ltd.

Commr. of Customs (import) Vs. Ashima Dyecot Pvt. Ltd.

SooperKanoon Citation : sooperkanoon.com/44944

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-23-2007

Judge : J Balasundaram, Vice, A T K.K.

Appellant : Commr. of Customs (import)

Respondent : Ashima Dyecot Pvt. Ltd.

Judgement :

1. We have heard both sides on the application by the Revenue for stay of operation of the order of the Commissioner (Appeals) who has accepted the importer's contention that the original assessment by way of endorsement of the Education Cess of the 2% on the bill of entry was not properly done and hence remanded the issue to the lower appellate authority for fresh decision.

2. According to the revenue, the Commissioner (Appeals) ought not to have entertained the appeal against the rejection of refund by the adjudicating authority but rejected the claim on the ground that for the original assessment was not challenged, following the ratio of the Apex Court decision in Commissioner of Customs v. Priya Blue Industries .

3. Prima facie the submission of the learned Counsel for the respondent that since exemption was extended to the goods imported, it is not a case of assessment of the bill of entry therefore the importer is not required to challenge the same, is not tenable for the reason that prima facie even if the exemption is extended on Bill of Entry, it is an assessment of bill of entry by extending such benefit. Therefore in

the light of the decision of the Apex Court in Priya Blue Industries, the Revenue has made out a prima facie case that the assessment ought to have been challenged by the importer who could not have filed a refund claim directly without challenging the assessment. In these circumstances the Revenue has made out a prima facie case for the stay and we accordingly allow the application.