

N.K. Proteins Ltd. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Ahmedabad

Decided On : Oct-04-2007

Judge : V T M.

Appellant : N.K. Proteins Ltd.

Respondent : Cc

Judgement :

1. This is an appeal against the order of the Commissioner (Appeals) No. 268/2006-KDL/Cus/Commr(A)/ AHD, dt.22.11.2006.

a) The appellant was sanctioned a refund of Rs. 5,23,810/- by the Dy. Commissioner vide his order dt.24.10.02 and the amount was paid to them. On appeal by the department, the Commissioner (Appeals) vide his order dt.4.4.05 set aside the refund order and also ordered recovery of the refund already sanctioned. The assessee claimed that the appeal filed by the department was time barred but the Commissioner (Appeals) vide his order dt.4.4.05, held the appeal as filed in time.

b) On appeal, the Tribunal vide his order dt.28.8.06, observed as under: Order-in-original was passed on 24.10.02 and whereas the application under Section 129D(3) was filed on 21.11.2003 which is treated as appeal, but the Commissioner (Appeals) notes down in the impugned order the matter was reviewed on 8.9.03 (Para 6 of OIA). The appellants doubts this date very much since the authorization letter was given by the Commissioner of Customs, Kandla in filing the appeal

dated 21.11.03, as such the appeal before the Commissioner (Appeals) is clearly time barred. It is not understood as to how the Commissioner (Appeals) noted down the date after review order-in-original dated 8.9.03. This is to be verified by seeing the original record and take decision afresh on the point of limitation as prayed for by appellants. Accordingly, the appeal is allowed in remand for reconsideration by the Commissioner (Appeals).

c) In pursuance of the Tribunal's order, the Commissioner (Appeals) has called for the original record and gave an opportunity of personal hearing on 21.11.06. As per the original record, the order dt.24.10.02 of the original authority was found to have been reviewed on 8.9.03 by the Commissioner on the findings. The date of authorization given was 21.11.03. These facts were, as per the findings of the Commissioner (Appeals), shown to the learned advocate Shri D.G. Trivedi, who represented the appellant before the Commissioner (Appeals). On that basis, vide his order dt.22.11.06, set aside the order of the original authority and allowed the appeal by the department. The learned advocate appearing for the appellant submits that the date of review in note sheet of the file of the Commissionerate is not relevant. The date of authorization was 21.11.03 and the appeal has been filed only on 6.2.04. Therefore, the appeal against the order dt.25.10.02 sanctioning refund was time barred.

4. The learned SDR submits that this issue has been decided by the Larger Bench of the Tribunal in case of CCE Chennai v. Standard Pencil Pvt. Ltd. , wherein it was held that the relevant date is that of review order and not the date when the order is issued.

5. I have carefully considered the submissions made by both sides. The order of the Commissioner (Appeals) allowing the appeal of the department leading to recovery of refund sanctioned is not being contested on merit. It is being contested only on the aspect of limitation. The appellant submits that in as much as the refund was sanctioned on 25.10.02, the authorization letter issued being dated 21.11.03, the department's appeal against the sanction of refund is time barred. I find that, in pursuance of the Tribunal's order dt.28.8.06, the Commissioner (Appeals) have verified the original record in presence of the appellant's

representative and found that the decision to review the order has been taken on 8.9.03 itself, which is within the one year from the date of decision sanctioning the refund.

The facts of the present case are identical to the facts of the case of Standard Pencil Pvt. Ltd. cited supra. Following the above, I hold that the review order has been passed within the prescribed time limit and therefore, there is no merit in the appeal by the party.

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