Kanohar Electricals Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-03-2007

Reported in : (2008)(126)ECC79

Judge : S Kang, Vice

Appellant : Kanohar Electricals Ltd.

Respondent : Cce

Judgement :

1. Heard both sides. The appellants filed this appeal against the impugned order whereby their refund claim was rejected as time barred.

2. The contention of appellant is that the duty was paid twice due to mistake and after this, when the mistake was realized, the appellant filed letter dated 18.9.2000 asked for refund of excise duty paid in excess and all the documents regarding payment of duty and clearance of goods were filed alongwith the application. Thereafter, the appellants sent many remainders and ultimately the revenue vide letter dated 5.11.2004, directed the appellant to submit the refund claim in the prescribed form within a week. In compliance to the direction by the revenue, the appellants filed refund claim in the prescribed form.

Thereafter, the adjudicating authority rejected the refund claim on the ground as time barred. The Commissioner (Appeals) upheld the adjudication order.

3. The contention of appellant is that as the refund claim was filed within four days from payment of duty vide letter dated 18.9.2000 and the revenue did not respondent to this letter and after four years, they were asked to file refund application on prescribed proforma within a week and appellants complied with the direction, therefore, it cannot be said that refund is time barred.

4. The contention of revenue is that there is a proforma prescribed for claiming the refund and appellants simply wrote a letter asking for refund of duty paid and as the proper refund claim was filed beyond the period of limitation, therefore, refund was rightly rejected.

I find that in this case the appellants applied for refund of duty paid in excess after four days from the date of payment vide letter dated 18.9.2000 and alongwith this letter, appellants also filed copies of all the relevant documents. The revenue thereafter vide letter dated 5.11.2004 directed the appellants to file the refund in proper proforma within a week and the same was done. In these circumstances, as vide letter dated 5.11.2004, the revenue accepted their request for refund and only objection was to file the refund claim in proper proforma. In this letter, it was also mentioned that if the direction was not carried within a week, the refund will be rejected. In these circumstances, it cannot be said that the appellant claim is time barred. The impugned order is set aside and the matter is remanded to the adjudicating authority to decide the claim afresh after affording an opportunity of hearing to the appellants. The appeal is allowed by way of remand.