Bajaj Auto Ltd. Vs. Commissioner of Customs

Bajaj Auto Ltd. Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/9968

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-03-1996

Reported in : (1996)(88)ELT763Tri(Mum.)bai

Appellant : Bajaj Auto Ltd.

Respondent : Commissioner of Customs

Judgement :
1. The matter was listed for admission. However, considering the issue involved, admitting the appeal, the same is taken up for decision on merits.

2. Heard Shri K.B. Kotian, Manager of the appellants and Shri K.M.Mondal, the ld. SDR for the Respondent.

3. The appellants filed a claim for refund of Rs. 22,403/-. The same was initially rejected by the Assistant Collector. The Collector (Appeals) allowed the same vide his order dated 19-5-1991. The claim was filed on the ground that the goods were lost and duty paid was refundable. Pursuant to the order of the Collector (Appeals), where refund was claimed, the same was rejected on the ground that the duplicate copy of the Bill of Entry was not submitted. The appellants claimed that they had already submitted the duplicate Bill of Entry at the time of claiming refund which was ultimately sanctioned by the Collector (Appeals). The Assistant Collector (Refund) however, rejected the same. In the appeal before the Collector (Appeals), the appeal has been rejected on the same ground.

4. Going by the earlier order of the Collector (Appeals) No. 195/91, it is clear that the appellants had produced evidence to show that the duplicate copy of Bill of Entry was surrendered by them to the Assistant Collector on 3-4-1989 against the acknowledgement, which they produced before the said authority and hence, it was not possible for them to re-surrender the same before the Assistant Collector (Refund).

There being a specific observation made in the order of the Collector (Appeals), the Assistant Collector sanctioning refund claim pursuant to the said order passed by the Collector (Appeals), ought not to have demanded the duplicate copy of the Bill of Entry and in any case, he could not have rejected the refund claim when the same was sanctioned by the Collector (Appeals) by passing a specific order in this regard.

His function was only to sanction the refund claim pursuant to the order passed by the Collector (Appeals). Having not done so, he has on the contrary, rejected the refund claim which act appears to be beyond the powers invested in him. In any case, there being evidence available on record that the duplicate copy was surrendered under acknowledgement before the same department, rejection of the refund claim on this count cannot be sustained and is, therefore, set aside. The appeal is allowed. The refund shall be sanctioned without raising the objection as to non-production of duplicate copy of the Bill of Entry. However, it will be open to the department to demand such safeguards in the nature of execution of a bond, as they may deem necessary to avoid any possibility of filing double claim on such documents.