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(2007) 11 DEL CK 0299

In the Delhi High Court

Case No : Cus. A.C. 9 of 2007

Pasupati Spinning and Weaving Mills Ltd. — APPELLANT

Vs

Commissioner of Customs and Another — RESPONDENT

Date of Decision : 06-11-2007

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2007) 123 ECC 294 : (2007) 149 ECR 294

Hon'ble Judges : Madan B. Lokur, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : K.B. Upadhyay and R.K. Sharma, for the Appellant; Jaswant Singh, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur and Dr. S. Muralidhar, JJ.

CM Nos. 6177/2007 & 6178/2007

Exemptions allowed subject to all just exceptions.

CM No. 6176/2007

For the reasons stated in the application, the delay in filing this appeal is condoned.

The application stands disposed of.

CUS. A.C. 9/2007

1. The assessed is aggrieved by an order dated 26th May, 2006 passed by the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi (''CESTAT'') in Customs Appeal No. 199 of 2006.

2. According to the assessed an incorrect assessment of customs duty was made in relation to a Bill of Entry dated 20th January, 2005 in respect of the import of

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a consignment of core polyester sewing threads (hereinafter called the goods). The assessed claims that under a bonafide mistake, it accepted the assessment and paid the customs duty in the sum of Rs. 6,08,892/- instead of Rs. 3,87,250.98.

3. A few days later, on 18th March 2005, the assessed filed an application for refund of the excess customs duty said to have been erroneously paid. This refund application was rejected by the Assistant Commissioner of Customs by his order dated 8th August, 2005 which was confirmed by the Commissioner (Appeals) and also by the CESTAT. It is under these circumstances that the assessed has filed present appeal notwithstanding the fact that there is no challenge to the assessment made on the Bill of Entry.

4. Learned Counsel for the assessed has drawn our attention to Shri Vallabh Glass Works Ltd. and Another Vs. Union of India (UOI) and Others, to contend that a refund can be claimed even though the assessment order has not been challenged.

5. We are of the view that the decision on which reliance is placed by the learned Counsel for the assessed does not assist him at all in as much as in Shri Vallabh Glass Works Ltd. the assessment order was challenged by filing a writ petition under Article 226 of the Constitution. It is only after the writ petition was allowed, that the refund application was made. On facts Therefore, the said decision is distinguishable.

On the other hand there are two decisions of the Supreme Court which directly cover the point in favor of the Revenue. They are Collector of Central Excise, Kanpur Vs. Flock (India) Pvt. Ltd. C-7, Panki Industrial Area, Kanpur, and Priya Blue Industries Ltd. Vs. Commissioner of Customs (Preventive), . In Flock (India) Pvt. Ltd. it has categorically been held that if the assessment order is not challenged by the manufacturer under the Central Excise Act, no application for refund of duty would be maintainable. Following Flock (India) Pvt. Ltd., in Priya Blue Industries Ltd. it was held that where the assessment order is passed under Customs Act and that has not been challenged by the importer, a refund claim would not be maintainable.

6. Since both these decisions lay down the same principle of law, which is of course, binding on us, we have no hesitation in rejecting the appeal filed by the assessed which raises an identical issue of law under the Customs Act.

7. Learned Counsel for the assessed has referred to a decision rendered by the 2005 (120) ECR 54 where a similar plea has been negatived. However, he says that an appeal has been admitted by the Supreme Court against that decision. We find that the said appeal before the Supreme Court was a statutory appeal which has been admitted. No decision has been rendered by the Supreme Court contrary to its earlier decisions in Flock (India) Pvt. Ltd and Priya Blue Industries Ltd.

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There is no merit in this appeal.

Dismissed.

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