Famous Cine Laboratory Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-31-1996

Reported in : (1997)(71)LC884Tri(Mum.)bai

Judge : K D Shiben, A Unni

Appellant : Famous Cine Laboratory

Respondent : Cce

Judgement :

2. A demand of Rs. 47,600 was raised against the appellants in Form DD2 on the ground that certain air conditioners obtained under Chapter X of Central Excise Rules have been resold within a period of 5 years from the date the air conditioners were installed. The appellants protested the recovery of this duty through the demand notice without a show cause notice. The Assistant Collector in his order dated 21.7.1986 held that the demand had been already confirmed under DD2 by the Superintendent and they could have gone in appeal to Collector (Appeals) against it. He, therefore, did not propose to interfere with the demand and directed the appellants to deposit a sum of Rs. 47,600 demanded in the demand notice already issued. Collector (Appeals) held that if the appellants thought that the demand was illegal they could have challenged the demand by way of appeal. He, therefore, without going into the merits of the case dismissed the appeal as infructuous.

3. The appellants through their written submissions desired decision on merits. We have heard Ld. DR and perused the records of the case.

4. The Assistant Collector has recorded that Superintendent had issued a demand notice and as DD2 is by itself is a confirmed demand, "I do not consider it necessary to discuss and go into the merits of the case or the grounds on which the said demand has been raised." We are afraid that this is not the correct approach in such matters. In the case of Union of India v. Madhumilan , the Hon'ble Apex Court held against the demand raised without notice. In the case of Collector of Central Excise, Baroda v. Kosan Metal Products Ltd. , the Hon'ble Apex Court held that Section 11A provides that when any duty of excise has not been 'levied or not paid or short levied or short paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the concerned person. A mere entry in RT-12 would not take the place of a demand notice. The short question in this appeal was whether the appellants in fact had sold the air-conditioner within the stipulated period so as to be disqualified from the concession. The Assistant Collector himself recorded the submissions of the appellants that M/s.

Famous Cine Laboratories is a proprietory concern of M/s. Universal Cine Trades Pvt. Limited and that these air conditioners are used in the same premises and they were not sold. In fact whether air conditioners were sold or not sold should have been the subject matter of adjudication for which a Show Cause Notice indicating the grounds on which it was proposed to demand duty ought to have been issued. Since no such Show Cause Notice has been issued and the Assistant Collector has failed to pass a speaking order discussing the merits of the case we have to hold that demand was not sustainable.

5. In view of this we set aside the impugned order and allow the appeal.