Commissioner of Central Excise Vs. J.K. Textiles Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-11-1997

Reported in : (1998)(99)ELT390TriDel

Appellant : Commissioner of Central Excise

Respondent : J.K. Textiles Ltd.

Judgement :
1. In this appeal the order of Commissioner (Appeals), New Delhi dated 8-10-1996 has been challenged.

2. The Commissioner (Appeals) in the impugned order had remanded the case for adjudication by the jurisdictional Additional/Dy. Commissioner on the ground that Assistant Commissioner was not competent to decide cases involving Modvat credit claims above Rs. 50,000/-.

2. Commissioner has prayed for quashing of the said order of Commissioner (Appeals) on the ground that the Commissioner (Appeals) has wrongly interpreted the provisions of law as well as failed to appreciate of the facts of the case.

3. Arguing the case of the Department Shri Jahngir Singh, JDR stated by three different orders, Assistant Commissioner, Jaipur had adjudicated Modvat claims of M/s. J.K. Textile, M/s. Manglam Cement Ltd. and two claims of Shri Ram Rayons disallowing Modvat claims of the three assessees and imposed penalties on them. In all the cases the amounts involved in Modvat claim exceeded Rs. 50,000/-. By

four orders in appeal of dated 8-10-1996 the Commissioner (Appeals) New Delhi remanded the cases back for adjudication by the jurisdictional Additional/Dy.

Commissioner holding that the Assistant Commissioner was not competent to adjudicate cases involving more than Rs. 50,000/-. JDR submitted that under Rule 57-I the proper officer was competent to determine the amount of credit to be allowed within six months from the date of any irregular credit after serving notice on the claimant and after considering any representation made by him. He drew attention to Rule 2(11) of the Central Excise Rules which defined "proper officer" as the officer in whose jurisdiction the land or premises of the producer of excisable goods was situated. Since in all the four cases the works were situated within the jurisdiction of the Assistant Commissioner, Kota, the Assistant Commissioner, Kota was the proper officer for purposes of Rule 57-1 and Rule 57U and to decide on the question of recovery of duty on the irregular credit taken by assessees under Rule 57A and Rule 57Q. He also referred to Rule 5 which authorised the Central Board of Excise and Customs to appoint any person as a Central Excise Officer for exercising all or any of the powers conferred under the Act and Rules. Rule 5 further empowers the Commissioner of Central Excise be authorise any subordinate officer to exercise within his jurisdiction all or any of the powers of the Commissioner. The Board's letter dated 15-12-1987 directed that all Show Cause Notices for disallowing the Modvat credit except in cases where Modvat credit is wrongly availed with intent to evade excise duty would be decided by the Assistant Commissioner. Further, the Jaipur Commissionerate had on 21-7-1995 clarified that Show Cause Notices in the normal course under Rules 57-I and 57U shall be issued and adjudicated by the jurisdictional Assistant Commissioner except where credit had been taken on account of suppression of fact and useful statement etc. Since the powers delegated by the Board or by the Commissioner to the Assistant Commissioner did not prescribe any minimum or maximum monetary limit for issuing Show Cause Notices or for adjudicating the cases for wrongful availment of Modvat credit, the Order of the Commissioner (Appeals) remanding the cases to Additional/Dy.

Commissioner on the ground that the Assistant Commissioner did not possess competence to decide issues where the claims were over Rs. 50,000/- was illegal.

He has therefore sought the quashing of the said order.

4. Appearing for the respondents, Shri R. Sudhinder, Advocate has argued that the Commissioner (Appeals) had rightly held that the Assistant Commissioner had no competence to adjudicate matters when the amount in dispute exceeded Rs. 50,000/-. He drew attention to this Tribunal's order dated 12-3-1997 in C.C.E., Jaipur v. Jaipur Tube Inds.

and Ors. wherein reliance was placed on the Board's instructions contained in F. No. 208/26/92-EX. 6, dated 14-5-1992 by which the Assistant Commissioners were empowered to adjudicate cases involving an amount of duty only upto Rs. 50,000/- except where cases related to approval of classification list and price list. In that case the Tribunal had held that the Assistant Commissioner had no powers of adjudication in cases where the amount involved was above 50,000. In another case referred to by the Counsel during the proceedings [Final Order No. A/348/'97-NB -1997 (92) E.L.T. 247 (Tribunal)] this Tribunal had held that for purposes of Rule 57-I and Rule 57-U the proper officer was the Assistant Collector.

5. We find that in the instant case the Assistant Commissioner has not only adjudicated and dis-allowed credit of amounts above Rs. 50,000/- but has also imposed penalty on the assessees. Under the aforesaid circular issued by the Board dated 14-5-1992 the Assistant Commissioner has been authorised to adjudicate cases subject to the monetary limit of Rs. 50,000/-. This was issued consequent on the amendment of Section 11A of the CESA, 1944 by the Finance Act, 1992 and in supersession of all existing instructions on the subject. The only situation in which the Assistant Commissioners have been given authority to adjudicate cases beyond Rs. 50,000/- as the amount of duty are cases'involving approval of classification list and price list, Assistant Collector has, therefore, clearly exceeded his powers in passing the said orders.

We, therefore, find that the Collector (Appeals) has correctly held in the impugned order that the Assistant Commissioner had no jurisdiction to adjudicate on said matters.

6. In the above view of the matter we find no merit in the stay application. Since our decision on the stay application relates to jurisdiction of the Assistant Collector and we agree with the order of Collector (Appeals) no issue on merits survives. Appeal dismissed.