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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-13-1997

Reported in : (1999)(113)ELT233TriDel

Appellant : Jay Cylinders Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. In this appeal filed by M/s. Jay Cylinders Ltd., Sikandrabad, the Order-in-Appeal dated 12-7-1996 passed by the Commr., C. Ex. (Appeals), Ghaziabad on an application filed by the Asstt. Collector, C. Ex., Under Section 35E of the Act is under challenge.

2. Shri C.L. Sawhney, Consultant appearing for the appellants submitted that the valuation of the gas cylinders of 32.5 kgs. was not an issue in the adjudication order dated 6-7-1993 passed by the Asstt.

Collector, C. Ex., Ghaziabad and that the Commr., C. Ex. (Appeals), Ghaziabad had gone beyond his jurisdiction to pass the order relating to cylinders of 32.5 kgs. capacity. He also submitted that against the same Order-in-Original No. 39/93 dated 6-7-1993, the Revenue had filed an earlier appeal and the same had been rejected by the Commr., C. Ex.

(Appeals) as time-barred. Against the same order again, the appeal was filed by the jurisdictional Commr., C. Ex., and certain directions have been given by the

Commr., C. Ex. (Appeals) which were not in the original order. He submitted that on this ground alone, the order passed by the Commr., C. Ex. (Appeals), was liable to be set aside.

3. In reply, Shri K. Srivastava, SDR stated that in pursuance of the Order-in-original, the Asstt. Collector had approved the price-lists and that the limitation will be counted from the date of approval of such price-lists and the appeal was in time before the Commr., C. Ex.

(Appeals). On merits, he submitted that the Asstt. Collector had decided the principle of loading the value by the notional value and such decision was applicable to all the cylinders irrespective of the capacity manufactured by the assessee and that even for cylinders of capacity 32.5 Kgs., the assessee has filed price-lists and they have been approved on 24-12-1993 in pursuance of the adjudication order dated 6-7-1993.

4. We have carefully considered the matter. We find that the appellants had filed price-lists for approval by the jurisdictional Asstt. Commr., C. Excise. The Asstt. Commr., C. Ex. after observing the principles of natural justice passed an appealable speaking Order-in-Original No.39/93 dated 6-7-1993. In that order, he took some view regarding the assessable value of the cylinders. This order was challenged by the Revenue and the Commr., C. Ex. (Appeals) rejected the appeal filed by the Revenue on the ground that the application filed by the Department was barred by limitation by 2 days. Subsequently in pursuance of the same Order-in-original, the Asstt. Commr., Central Excise approved the price-lists. The price-lists were approved in pursuance of the same order, appeal against which filed by the Revenue had been dismissed by the Commr., Central Excise (Appeals) as time-barred.

5. We consider that the approval of the price-lists was in pursuance of the same order which had become final as the Revenue's appeal had been dismissed. Filing of another appeal with the Commr., C. Ex. (Appeals) against the same order was not proper even when the price-lists have been approved on a subsequent date as the approval was in pursuance of the earlier order dated 6-7-1993.

6. Without going into the other aspects of the matter, we consider that the second appeal against the same Order-in-original dated 6-7-1993 was not maintainable. To repeat the appeal against the Order-in-original dated 6-7-1993 had been dismissed by the Commr., C. Ex. (Appeals) while the appeal against the same order even when filed subsequently had been disposed of on merits. We consider that even when the approval of the price-lists was on a subsequent date, for the purpose of limitation, the date of the original order alone in pursuance of which the approval was subsequently accorded will be material inasmuch as in the approval itself, it has been remarked, "Approved as per Adj. Order No. 39/93 dated 6-7-1993".

In view of the above discussions, we set aside the impugned Order-in-Appeal and as a result, the appeal is allowed.

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