Collector of C. Ex. and Cus. Vs. Jolly Electricals Inds.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-29-1997

Reported in : (1999)(110)ELT669Tri(Mum.)bai

Appellant : Collector of C. Ex. and Cus.

Respondent : Jolly Electricals Inds.

Judgement :

1. The Respondents are engaged in manufacture of excisable goods falling under two headings namely 85.25 of 90.89 Central Excise Tariff Act, 1985. They were availing of Small Scale Industries exemption under Notification 175/86. The Department sought to demand duty from them on the ground that they have exceeded first clearance value of Rs. 30 lakhs by totalling the value of clearances of both the excisable goods.

The duty demand was raised on the ground that they are not entitled for exemption because under exemption once they exceeded the clearance value of Rs. 30 lakhs collectively for both the headings. After paying the duty under protest they filed a refund claim with the jurisdictional Asstt. Commissioner on the ground that they were entitled to clear goods under exemption up to Rs. 15 lakhs value for each of the excisable goods even though they might have exceeded the clearance value of Rs. 15 lakhs in one of the heading. The A.C. passed the order granting the refund. The jurisdictional Commissioner filed a review application against this order of the A.C. before the Commissioner of Central Excise (Appeals), Mumbai who passed the impugned order dated 27-2-1992 wherein the Commissioner

(Appeals), without going into the merits of the case dismissed the review application on the ground that according to Section 35A (b) of the Central Excise Act, 1944, where the Commissioner (Appeals) is of the opinion that in all the cases of refund erroneously refunded, no order requiring the assessees to pay the duty erroneously refunded shall be passed unless the assessees are given notice within the time limit specified under Section 11A to show cause against the proposed order.

He therefore rejected the application.

2. Shri S.V. Singh, the ld. DR contended that the time limit which the Commissioner (Appeals) as referred to is for an appeal under Section 35A(3) whereas the review application before him disposed off by impugned order is of different in nature being review application filed in terms of Section 35E(4) on direction from the Commissioner under Section 35E(3). This is in exercise of power of Superintendence by the Commissioner over the legality and proprietary of order passed by the Asstt. Commissioner, subordinate to him. Therefore the Commissioner (Appeals) ought to have been considered from this angle. In this context the ld. DR also referred to and relied upon the Madras High Court Judgment in the case of Shivanand Pipe Fitting v. Supdt. -1994 (45) ECC 77 wherein the Madras High Court has held that provision of Section 11A are not attracted in proceedings under Section 35E of Central Excise Act 1944. We therefore remand the matter to the Commissioner of Central Excise (Appeals), Ahmedabad for considering the issue afresh in the light of the two sections of the Act are concerned namely the Section 35E and Section 11A to determine the question of limitation in the context of the scope of objective of these two sections. The impugned order is set aside and the matter remanded in the above terms. The Commissioner (Appeals) may also give hearing to the Respondents. The appeal is disposed off accordingly.