Commissioner of Central Excise Vs. Shree Enterprises

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-15-1998

Reported in : (1999)(113)ELT560Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Shree Enterprises

Judgement :

1. The present appeal has been filed by the Commissioner of Central Excise, Mumbai-II against the Order dated 12-5-1993 passed by the Commissioner of Central Excise (Appeals), Mumbai. The impugned order is a common order disposing of four appeals filed by the department before that authority; it is the case of the Department that the Respondents manufacture Fancy Yarn falling under Chapter 5606 of the Central Excise Tariff Act, 1985. They were asked to take Central Excise Licence for the manufacture of the said excisable goods and to follow Central Excise Procedures. They were also requested to supply information regarding production clearance of the goods manufactured by them. But according to the Department Respondents did not take any steps to comply with the directions. The Jurisdictional Assistant Commissioner of Central Excise passed an Order-in-Original dated 26-8-1991 in all these cases in which he dropped the proceedings initiated by the show cause notice, on the ground that in the absence of any documentary evidence and material as regard to show that the Respondents have manufactured/cleared excisable goods namely fancy yarn, the Assistant Commissioner had held that the show cause notices are not sustainable

and dropped the proceedings. The Commissioner (Appeals) in the impugned order found no infirmity in the order passed by the Assistant Commissioner and rejected the Department's (Appeals). None is present for the Respondents. The ld. DR, Shri D. Gurnani pointed out that it is apparent from the impugned order that there was written submissions filed by the Respondents before the Commissioner (Appeals) which ought to have been recorded and dealt with by that authority and in the absence of such an exercise, the ld. DR would plead for remand of the case as prayed for in the grounds of appeal. We are inclined to accept this plea for the reason that before the Assistant Commissioner there was no response at all from the Respondents in which situation the Assistant Commissioner was constrained to drop the proceedings.

Apparently before the Commissioner (Appeals) the Respondents have put forth, certain submissions which may be of relevant to the case of the Department and which will have to be dealt with and in this view of the matter, we set aside the impugned order and remand the matter to the Commissioner (Appeals) for passing orders de novo to set out the respondents submission before him and disposal according to law. The appeals are allowed by way of remand.