Commissioner of Central Excise Vs. E.i.D. Parry (i) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-11-1998

Reported in : (1998)(102)ELT212TriDel

Appellant : Commissioner of Central Excise

Respondent : E.i.D. Parry (i) Ltd.

Judgement :

1. Commissioner of Central Excise, Jaipur has filed this appeal against the combined Order-in-Appeal passed by the Commissioner of Central Excise (Appeals), Jaipur allowing the appeals filed before her by M/s.

Paliwal Mill Steel (I) Ltd., and M/s. E.I.D. Parry (I) Ltd., (respondents herein) on the limited ground of lack of jurisdiction on the part of the concerned Assistant Commissioner to adjudicate demand cases involving more than Rs. 50,000/-. The Commissioner (Appeals) remanded the matter to the jurisdictional Deputy Commissioner/Additional Commissioner to readjudicate the matter after issuing the corrigendum/addendum wherever necessary to the show cause notices.

2. Both the appeals filed by the Commissioner challenging the aforesaid Order-in-Appeal have been posted for hearing today. While Departmental Representative Shri Sanjeev Srivastava is present on behalf of the Commissioner, only Shri Rajesh Kumar, learned Counsel for one of the respondents M/s. E.I.D. Parry Ltd. is present, the other respondent is absent and is also not represented. However, since the issue is common, I proceed to dispose of both the appeals after hearing

the learned Counsel for the respondent and the Departmental Representative. In support of the Department's appeals, the learned DR submits that the Commissioner (Appeals) has erred in remanding the matter for de novo decision since there is no infirmity or lack of jurisdiction on the part of the Assistant Commissioner who passed the orders in question which relate to irregular availment of Modvat credit which was sought to be corrected in terms of Rule 57-I of the Central Excise Rules, 1944. It was pointed out that under the said rule there is no requirement that cases involving disallowing of Modvat credit or connected duty demand of more than Rs. 50,000/- should be adjudicated by an official higher than the Assistant Commissioner. There was no allegation of suppression or fraud. It has been held by the Tribunal in Triton Valves v. Collector of Central Excise reported in 1997 (89) E.L.T. 233 that the instructions limiting the power of adjudication by an Assistant Collector to demand cases up to Rs. 50,000/- were not under any statutory provisions. Further, the matter has also been clarified by the Central Board of Excise and Customs that Modvat cases not involving the longer period of limitation can be adjudicated by Assistant Commissioners without any constraint on amount. Reference is made to the Jaipur Commissionerate's Instruction No. 73/95-CE (17-MOD) issued under F. No. IV(10)51/Policy/95, dated 21-7-1995.

3. Taking into account, the ratio of the Tribunal decision cited and the fact that the Department itself has clarified the matter in the manner referred to above, I hold that the Commissioner (Appeals) erred in setting aside the orders of the Assistant Collector. The impugned orders in appeal are set aside and the matter remanded to the Collector (Appeals) for de novo decision on merits after grant of personal hearing to the concerned respondents.

4. The learned Counsel for the respondents makes a request at this stage that directions may be given for early completion of the de novo disposal by the Commissioner (Appeals). The plea is accepted.

Commissioner (Appeals) may dispose of the appeals de novo expeditiously.