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Collector of Central Excise Vs. J.K. Cement Works

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-13-1998

Reported in : (1998)(102)ELT209TriDel

Appellant : Collector of Central Excise

Respondent : J.K. Cement Works

Judgement :

1. The issue for determination in this batch of Cases is as to whether the Assistant Commissioner has jurisdiction to adjudicate cases involving duty amounts exceeding Rs. 50,000/-. The lower authority by whose order the Revenue is aggrieved, has held that the Asstt.

Commissioner has no jurisdiction to adjudicate cases where the duty amount involved is more than Rs. 50,000/-.

2. We have heard Shri P.K. Jain, the ld. SDR and Shri Ashok Sagar, the ld. Advocate appearing for M/s. J.K. Cements. We find that in the case of CCE v. Jaydee Agro Chemicals and Ors., it was held that circulars issued by the Central Board of Excise & Customs, restricting powers of the Asstt. Commissioners to adjudicate cases involving duty amount below Rs. 50,000/- are only administrative circulars which cannot take precedence over Notification No. 8/1944 and Notification No. 93/89. The Tribunal has held that by the Circulars, the Central Board of Excise and Customs had administratively limited the powers of the Asstt.

Commissioners and those exceeding these powers cannot be treated as legal infirmity, but is an administrative irregularity. The Tribunal has set aside the Order of the Commissioner (Appeals) and remanded the matters for decisions on merits (Order No. A/188-213/98-NB and A/213-F/98-NB, dated 19-3-1998). This order of the Tribunal has been subsequently followed in a number of cases.

3. The ld. Counsel, Shri Ashok Sagar, draws our attention to the Tribunal's decision 1998 (99) E.L.T. 390 in the case of CCE, Chandigarh v. J.K. Textiles Ltd., in which the Tribunal has held that the Asstt.

Commissioner has exceeded his powers in adjudicating cases involving duty of more than Rs. 50,000/-. However, we find that in the later order referred to above (in the case of CCE v. Jaydee Agro Chemicals), the Tribunal has taken into account the 2 Notifications viz. 8/1944 and 93/89 issued in exercise of powers conferred by Section 33 under which the powers of the Asstt. Commissioners are those as indicated in Section 33(A) which confers powers of confiscation and imposition of penalty without any limit. Hence, the case law cited by the ld. Counsel is distinguishable.

4. Following the ratio of the Tribunal's Order in the case of Jaydee Agro Chemicals and Ors. cited supra, we set aside the impugned orders and remand the matters to the Commissioner of Central Excise (Appeals) for decision on merits after giving the assessees an opportunity of being heard in person.

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