Cc Vs. Paramount Trading Corporation

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-05-1998

Reported in : (1998)(79)LC385Tri(Mum.)bai

Judge : R T Lajja, A Unni

Appellant : Cc

Respondent : Paramount Trading Corporation

Judgement :

1. These are two appeals filed by the Revenue being aggrieved with the common Order-in-Appeal dated 23.10.1980 passed by the Collector of Customs (Appeals), Bombay. The respondents are M/s. Paramount Trading Corporation, Moradabad. The matter relates to the additional duty of customs known as countervailing duty in respect of the scrap imported.

The Appellate Collector took a view that the scrap of recyclable material was not the result of a manufacturing activity and that it was not a 'manufactured' goods even if they were 'goods'. He held that the scrap when imported was not liable to pay the countervailing duty.

2. In his common order-in-appeal the Appellate Collector of Customs had disposed of 11 appeals from different files. The Revenue have filed two appeals. The Tribunal had directed the Revenue to file 9 more supplementary appeals if they so desire. They have failed to do so. As the matter relates to the classification we

proceed to deal with these two appeals on merits after hearing the Ld. JDR Shri S.N. Ojha.

3. The appeals were filed with the Government of India and were subsequently transferred. The Revenue has prayed for condonation of delay in filing the appeal. Taking into account the facts and circumstances of the case we condone the delay.

4. The respondents M/s. Paramount Trading Corporation had prayed for decisions on merits.

5. Shri S.N. Ojha, Ld. JDR submits that the matter is entirely covered by the Apex Court decision in the case of Khandelwal Metal & Engineering Works v. Union of India . Although, the Apex Court Bench in the case of Hyderabad Industries Ltd. v. Union of India had in para 16 of its judgment expressed the view that the decision in the case of Khandelwal Metal & Engineering Works, referred to above, requires re-consideration of a Larger Bench, there was no stay of the said earlier order of the Apex Court. He submits that as the matter is already covered by the Apex Court decision the view taken by the Ld. Appellate Collector was not correct and legal and the appeals filed by the Revenue be allowed.

6. We have carefully considered the matter. We find that the matter is covered In/ the Apex Court decision in the case of Khandelwal Metal & Engineering Works and Ors. v. Union of India, supra. The Apex Court held that the brass scrap was subject to additional duty of customs' in accordance with Section 3(1) of the Customs Tariff Act and that the application of the process of manufacture in the imported article was not relevant for levy of additional duty of customs.

7. We also agree with the Ld. JDR that till the Apex Court decision in the case of Khandelwal Metal & Engineering Works supra, is set aside by the Apex Court it is the law of the land and had to be followed. The Apex Court had not recalled their earlier order but had only observed that it requires re-consideration by a Larger Bench.

8. The matter is very old. The original orders were passed during the period 1979 and 1980. The matter is corning up before the Tribunal from January, 1987 onwards.

9. Taking all the relevant facts and considerations into account we set aside the impugned order in appeal. As a result both the appeals filed by the Revenue are allowed.