Commissioner of Central Excise Vs. Kuldeep Singh and 4 ors.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-03-2000

Reported in : (2000)(69)ECC725

Judge : S T G.R., S Kang

Appellant : Commissioner of Central Excise

Respondent : Kuldeep Singh and 4 ors.

Judgement :

1. These are 5 appeals filed by the Revenue. One appeal is filed against Shri Ajay Kumar Jain and another appeal has been filed against Shri Hargobind Singh. On careful consideration of the submissions made by Shri R.D. Negi, learned Senior Departmental Representative and Shri Jagjeet Singh, learned Advocate for Shri Ajay Kumar Jain we note that proceedings against Shri Ajay Kumar Jain were dropped and they were not the subject matter of the review before the Central Board of Excise and Customs. Therefore, the appeal filed by Revenue against Shri Ajay Kumar Jain is not sustainable and the same is rejected.

2. Insofar as the reduction of the penalty imposed on Shri Hargobind Singh is concerned, we note that Hargobind Singh did not file an appeal before the Tribunal and the Tribunal had not sent back his case for de novo adjudication. Since his case was not sent back for de novo adjudication, therefore the question of reducing the penalty on him did not arise. In the circumstances, the learned Commissioner's order in respect of Shri Hargobind Singh is not sustainable in law

and that part of the order passed on de novo consideration of the case against Shri Hargobind Singh is set aside.

3. Now there remain only 3 appeals, one appeal is against Shri Kuldeep Singh. On him, the penalty was reduced from Rs. 3 lakhs to Rs. 2 lakhs.

The 2nd appeal is against Shri Balwinder Singh. On him, the penalty was reduced from Rs. 1 lakh to Rs. 50,000 and the 3rd appeal is against Shri Gursharan Singh Sodhi. On him, the penalty had been reduced from Rs. 10 lakhs to Rs. 5 lakhs.

4. Arguing the case for Department, learned Senior Departmental Representative submits that the facts of the case remain the same and, therefore, there was no necessity to reduce the penalty in de novo adjudication. He submits that the Commissioner had travelled beyond his power by reducing the penalty on these people in de novo adjudication as there was no additional evidence supporting the respondents herein case adduced in de novo adjudication. He submits that the case was remanded for de novo adjudication only on the ground of denial of principles of natural justice. He submits that since no additional evidence was produced there was no case made out by the respondents herein for reduction in their penalty. He, therefore, prays that the order of the learned Commissioner reducing the penalty may be set aside and the 3 appeals of Revenue may be allowed.

5. Shri Harbans Singh, learned Advocate appearing for Shri Kuldeep Singh submits that it was a case of de novo adjudication after setting aside the earlier order. He submits that since the earlier order was set aside there was no order, and, therefore, the Commissioner after examining the facts of the case and defence produced by the respondents herein had found that a penalty as indicated by him in the impugned order was sufficient in the facts and circumstances of the case. He submits that once an order is set aside, that order no longer exists even for comparison purposes. He submits that thus, no cognizance can be given to the earlier order of the Commissioner imposing penalty of Rs. 3 lakhs on Shri Kuldeep Singh, Rs. 1 lakh on Shri Balwinder Singh and Rs. 10 lakhs on Shri Gursharan Singh Sodhi. He submits that in these circumstances, there is nothing wrong with the order of the learned Commissioner (Appeals).

6. We have carefully considered these submissions. We note that S/Shri Kuldeep Singh, Balwinder Singh and Gursharan Singh Sodhi had filed appeals before the Tribunal. The Tribunal had remanded these appeals for de novo adjudication after setting aside the order against which these appeals were filed. Since the order in question was set aside, we agree with the contention of the learned Counsel for the appellants that order did no larger exist and in the fresh order the learned Commissioner would have been then right even to drop proceedings. In this view of the matter, we do not find any legal or factual infirmity in the impugned order insofar as the case of S/Shri Kuldeep Singh, Balwinder Singh and Gursharan Singh is concerned. In the circumstances, we upheld the impugned order in regard the above 3 respondents and rejected the 3 appeals filed by Revenue.