Raymond Ltd. Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-28-2000

Reported in : (2000)LC711Tri(Mum.)bai

Appellant : Raymond Ltd.

Respondent : Commr. of C. Ex.

Judgement :

1. These appeals arise out of orders passed by the Commissioner of Central Excise (Appeals), Bhopal. The appeals, therefore, would lie to Delhi benches of the Tribunal. Vide two miscellaneous applications the plea is made by the applicants that since the registered office of the applicants is in Mumbai, these appeals may be retained and heard in Mumbai bench. This prayer is granted and the appeals are continued to be dealt with in Mumbai benches.

2. Stay applications bearing nos. E/Stay - 3082-R and E/stay - 3139-R/99-Mum. are also filed. On hearing Shri Prakash Shah, Advocate for the applicants and Shri K. L. Ramteke for the revenue, it appeared that the main appeals themselves could be taken up for disposal at this stage. This was done after granting waiver of the condition of pre-deposit of Rs. 9,35,367/-confirmed as duty and Rs. 50,000/- imposed as penalty in both the proceedings.

3. The issue involved before the Assistant Commissioners who passed the orders-in-original was of the classification of plain plush fabrics.

The assessees claimed classification under sub-heading 5801.31 of the CETA. The department insisted on classifying the products as under 5801.32. In these proceedings the Assistant Commissioners upheld the department's case thereby confirming the differential duties payable and also imposing penalties. Against these two sets of orders, the assessees filed two appeals. The Commissioner (Appeals) in his interim orders directed pre-deposit of the entire duty confirmed. He did not direct the assessees to appear before him before passing this order citing the judgment of the Supreme Court in the case of UOI and Ors. v.Jesus Sales Corpn. Ltd. - 1996 (83) E.L.T. 486. The assessees in each case thereafter applied for modification. It was claimed that CBEC had issued certain directions on the classification of the contested goods.

It was submitted that subsequent to the orders against which the appeals had been filed, the jurisdictional Assistant Commissioners had accepted the classification suggested by the assessees. It was therefore claimed by the assessees that there was a strong case for wavier of pre-deposit. The learned Commissioner, however, vide two orders, dismissed the main appeals for failure of the appellants to comply with his directions under the provisions of Section 35F of the Central Excise Act, 1944. In these orders he did not speak of the modification applications or the issues on merits agitated by the assessees. The appeals have been filed against these two orders.

4. We observe that in the cited case the Supreme Court had permitted disposal of the stay application without hearing the assessees provided the officer had looked into the relevant factors. The orders of the Commissioner are bereft of any discussion on the arguments raised in the appeal memoranda. This judgment had been taken into account by the Gujarat High Court in their judgment in the case of Ricoh India Ltd. - 1999 (34) RLT 231. In this judgment the High Court had clearly observed that there was necessity to give a hearing before disposal of the stay applications.

5. In the following reported judgments in identical circumstances the Tribunal had held the impugned order as not maintainable in view of the principles of natural justice and had remitted the proceedings back to the Commissioner for

adjudication de novo.Entek IRD International v. CCE 6. We further observe that where in the orders leading to the present dispute before us, the Assistant Commissioner has not accepted the classification suggested by the assessees, thereby confirming the differential duty, in the later proceedings perhaps on following the Board's orders, the same classification has been accepted and proceedings dropped. Unless there is any change in the chapter notes etc.; there is no reason why the department should adopt two different stands for same commodity in classification. In our opinion it is a fit case for the Commissioner to hear the appellants on merits without insisting on any pre-deposit. We allow these appeals and direct the Commissioner to hear the assessees without insisting on pre-deposit.