Collector of Central Excise Vs. Sigma Enterprises

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-28-2000

Reported in : (2001)(127)ELT218TriDel

Appellant : Collector of Central Excise

Respondent : Sigma Enterprises

Judgement :

1. In this appeal filed by the Revenue, the respondents are M/s. Sigma Enterprises.

2. When the matter was called, no one appeared for the respondents, M/s. Sigma Enterprises. A notice for today's hearing had been received back undelivered with the postal remarks "left". It is an old matter in which the show cause notices were issued in the year 1993-94. We are proceeding to deal with the matter on merits after hearing Smt. Rashida Hussain, SDR.3. The matter relates to the classification of the goods referred to as charging tubes, discharge tubes, suction tubes and discharge tube extension. The respondents had classified the same under sub-heading No. 8414.91 and the same was approved by the jurisdictional authorities. Subsequently, they revised the classification on their own and took a stand that the goods were not excisable. The proceedings were drawn and under the order-in-original Nos. 171-174/CE/'94, dated 29-11-1994 while disposing of the four show cause notices, the Collector of Central Excise, New Delhi took a view that while the goods were excisable and dutiable their correct classification was to be under Heading No. 74.11 and not under sub-heading No. 8414.91 as earlier

decided by the Department.

4. We find that this classification has neither been convassed by the manufacturer nor by the Revenue. The Revenue wanted the goods to be classified under sub-heading No. 8414.91 of the Central Excise Act, while the manufacturer pleaded that there was no process of manufacture involved and the goods were not excisable. We consider that in the interest of justice, the revised classification should have been placed before the manufacturer and opportunity should have been given to both the sides for taking the view as has been taken by the adjudicating authority in the present proceedings.

5. It is also seen from the impugned order that the matter has been dropped on the ground that the allegation of suppression and mis-statement had not been established against the party. We find from the impugned order that no grounds had been made out for dropping the matter on the basis of suppression, etc.

6. As we consider that the classification has been settled against the manufacturer without adequate opportunity and as the allegations of suppression, etc. had also been found non-established, without adequate grounds and material on record, this matter needs to be re-examined by the jurisdictional adjudicating authority, who should provide opportunity to both the sides and after taking into account the allegations made in the show cause notice and the material on record, pass a speaking appealable order as per law. As the matter is very old, it should be taken up for disposal on priority basis. With these observations, the appeal filed by the Revenue is allowed by way of remand. Ordered accordingly.