Commissioner of Central Excise, Vs. M/S. Ama Pvt Ltd

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-26-2001

Appellant : Commissioner of Central Excise,

Respondent : M/S. Ama Pvt Ltd

Judgement :

1. We have heard the departmental representative on this appeal filed by the Commissioner. The respondents is absent and has requested a decision on the submissions in the cross objection. These do not appear to have been filed.

2. In the classification list filed the respondent effective from 1.4.1995, it had claimed the benefit of notification 1/93. The jurisdiction Assistant Commissioner passed an order in which he said that the value of the goods cleared in 1994-95, which was required to be considered to determine the eligibility of the notification, could not be verified because the records of the manufacturer had been seized by the preventive department. She therefore ordered provisional assessment under Rule 9B.3. The manufacture appealed this order to the Commissioner (Appeals).

It contended that since the department had taken over the records, it was easy to verify the clearances for 1994-95 and this was not a ground for ordering provisional assessment. The Commissioner (Appeals) accepted this contention, finding that the provisional assessment had been ordered "as a matter of routine". He therefore set aside the order directing the provisional assessment, allowing the appeal.

4. This order is questioned in the department's appeal. It is contended that the matter should have been remanded for de novo adjudication.

5. It is evident that this appeal has been filed by the Commissioner without even pausing to consider a moment the consequence of the Commissioner (Appeals) order. The result of that authority setting aside the order of provisional assessment is that there is not order passed upon the classification list filed by the manufacturer. It has not been approved or disapproved. It is as if no order on it has been passed at all. We fail to see what difference would have been achieved if the Commissioner (Appeals) had remanded the matter. In that case, he would specifically said that the classification list requires to be dealt with in accordance with law. That in any case, is the outcome of this order. A totally unnecessary appeal has therefore been filed.