Commissioner of Central Excise, Vs. M/S. Bansali Engg. Polymers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-27-2001

Appellant : Commissioner of Central Excise,

Respondent : M/S. Bansali Engg. Polymers

Judgement :

1. Vide Final Order No.A/823-28/99-NB dated 7.9.99, the Tribunal held that although none of the demand show cause notices issued to them specifically raised any demand on ABS waste, assessments during the entire period of demand were provisional under Rule 9B of the Central Excise Rules and hence the Assistant Commissioner was empowered to determine the final liability of the assessees on finalisation and that the assessments have been finalised vide the adjudication order which was the subject matter of the appeals. The Tribunal, therefore, held that the authorities below were empowered to demand on ABS waste and since there was no dispute about the amount of duty confirmed, the impugned order was upheld and the appeals of the assesses rejected. The assessees filed an application for rectification of mistakes which was disposed of vide Miscellaneous Order No.M/139/2000-NB date d 14.7.2000, wherein the Bench accepted the contention of the assessees that there was an error in treating the assessments during the demand period as provisional, in view of the fact that the provisional assessment order for ABS waste is dated 10.4.96 while duty on such waste was confirmed for the period from September 95 to March 96 which is prior to the date of the provisional assessment order. In these circumstances the Bench held that the Department was required to issue a show cause notice for

recovery of duty on ABS waste and since no such notice was issued, demand on ABS waste is bad in law and was set aside. The Tribunal also noted that the show cause notice dated 14.2.96 charging the assessees with altering the classification of reprocessed granules in contravention of Rule ;173B, wrongly claiming nil rate of duty, under Notification 111/95 and wrongly claiming the benefit of captive consumption under Notification 67/95 for ABS waste, has not yet been adjudicated and the Tribunal gave liberty to the Revenue to adjudicate this notice in accordance with law. According to the Revenue which is represented by Shri Rajeev Tandon, learned SDR, the show cause notice dated 14.2.96 was disposed of by adjudication order No.10/CL/97 dated 28.2.97 of the Assistant Commissioner and against that order, the assessees preferred appeals which were disposed of by Order-in-Appeal No.35/CE/BPL/98 dated 5.2.98 which was challenged in appeal Nos.E/544/98 and E/683-687/99-NB which came to be disposed of by Final Order No.A/823-28/99-NB. Learned SDR draws our attention to the Assistant Commissioner's order and submits that the charge in show cause notice dated 14.2.96 has been answered in the Order-in-Original in which it has been held that the benefit of Notification 67/95-CE is not available on waste and scrap as the final products manufactured therefrom viz. reprocessed granules are cleared at nil rate of duty under Notification 111/95. He, therefore, prays that the above mistake may be set right and that be held that the notice dated 14.2.96 also stands adjudicated by the Assistant Commissioner in his order dated 28.2.97.

2. The prayer is opposed by learned Counsel, Shri B.L. Narasimhan who contends that only six demand notices were adjudicated by the Assistant Commissioner who extended the benefit under Notification 111/95 to reprocessed granules but confirmed the duty demand on ABS waste on the ground that it was used in the manufacture of reprocessed granule4s which were cleared at nil rate of duty. He draws our attention to the operative portion of the Assistant Commissioner's order wherein it clearly disposes of six show cause notices for demand of duty. He, therefore, submits that there is no error apparent on the face of the record and prays that the ROM application be rejected.

3. We have carefully considered the rival submissions and perused the adjudication order, the impugned order and the Final Order of the Tribunal read

with the Miscellaneous Order on the ROM application filed by the assessees. We agree with the learned Counsel for the respondents/assessees that the Order-in-Original only disposes of six show cause notices raising demands on reprocessed granules and that the Assistant Commissioner has confirmed duty demand on ABS waste without issue of a show cause notice raising demand on ABS waste. It does not transpire from the adjudication order that the show cause notice dated 14.2.96 was also adjudicated thereunder. We, therefore, hold that there is no mistake in the Final Order of the Tribunal and accordingly reject the application of the Revenue.