Commissioner of Central Excise, Vs. M/S. Smithline Beecham Consumer

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-28-2001

Reported in : (2001)(76)ECC602

Appellant : Commissioner of Central Excise,

Respondent : M/S. Smithline Beecham Consumer

Judgement :

2. The assessee was aggrieved by the Order of provisional assessment passed by the adjudicating authority. The Order of the adjudicating authority dated 7.1.99 was taken up in appeal before the lower appellate authority. The main grievance voiced before the lower appellate authority was that the assessing authority altered the basis of assessment while making provisional assessment. Such change was in violation of the natural justice inasmuch as no SCN was issued; Nor was any hearing afforded to the assessee. The Commissioner without going into the correctness or otherwise of the change brought out to the basis of assessment, set aside the order and remanded the matter for de noveo decision after issuing a SCN and affording an opportunity of being heard in person. This direction given by the appellate Commissioner is under challenge.

3. The main contention raised by the Departmental Representative is that the Commissioner went wrong in directing the adjudicating authority/assessing authority to issue SCN before making provisional assessment. Issue of show Cause Notice before passing provisional assessment was not warranted by any of the provisions of the Central Excise Act or the Rules framed thereunder.

4. It is true that no provision in the Act or the Rules contemplate issue of Show Cause Notice before making an order for provisional assessment. But when the basis of assessment is changed and assessee is ordered to make remittance on provisional assessment additional burden is cast on the assessee. The principle of natural justice required hearing to be given to the assessee when the order seeks to impose additional liabilities on him. Any order which results in civil consequence on a citizen should be passed after complying with the principles of natural justice. For complying with the principles of natural justice it is not mandatory to issue a shoo Cause Notice. Even without a show Cause Notice a hearing can be afforded to the aggrieved party. In this case when the assessee is having specific contention that the entire basis of assessment is being altered to saddle him with additional liability by levying provisional duty, the adjudicating authority should have afforded a hearing to the assessee. The appellate authority's order challenged before us can be taken only as having the effect of directing the assessing authority to afford a reasonable opportunity of being heard in person to the assessee before levying provisional duty. That direction cannot be faulted. Even without issuing a SCN, the adjudicating authority/assessing authority should afford a reasonable opportunity of being heard in person to the assessee before passing order for provisional assessment.