Commissioner of Central Excise Vs. Kapoor Enterprises

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-07-2002

Reported in : (2003)(151)ELT306TriDel

Judge : S T G.R., P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Kapoor Enterprises

Judgement :

1. Revenue has filed this Appeal being aggrieved by the order passed by the learned Commissioner holding that the process undertaken by the assessee in regard to making Chandeliers was a process of manufacture and therefore, duty was payable on Chandeliers.

2. Arguing the case for the respondent Shri B.L. Narsimhan, learned Counsel submits that Revenue has only challenged the order pertaining to the process of making chandeliers as manufacture and there is nothing in regard to other items assembled by them. He submits that the respondent had accepted this contention of Revenue that the process of making chandeliers amounted to manufacture for the purpose of Section 2(f) of Central Excise Act, 1944. He submits that the respondents had claimed benefit of small scale exemption under the Notification then in force which was granted by the Authorities. He submits that in the present appeal there is no questioning about admissibility of the SSI exemption to the respondents herein and hence the appeal is infractuous and does not have any

merit and the same may be rejected.

3. Shri Mewa Singh, learned SDR refers to this Tribunal's remand order and submits that the case was remanded with the direction that calculation of quantum of demand for the subsequent period has been left to the jurisdictional Assistant Commissioner Central Excise and that the jurisdictional Commissioner of Central Excise should discuss all the submissions made by the appellant and then pass a self-contained speaking order in ac-cordance with law. Learned UK further submits that CEGAT in its order has not given any finding on the point whether the process undertaken by the party amounted to manufacture and that it was not open to the Commissioner to hold that there was no manufacture involved in assembling of various parts by the party to make items of lighting and fittings and that the Commissioner has erred in holding that the process of carrying out of the assembly work did not amount to manufacture. He, therefore, prays that the appeal may be allowed.

4. We have heard the rival submissions. On careful consideration of the submissions made we note that the points were agitated in detail before the Tribunal and the Tribunal had directed that the contention of the appellant should be considered while ordering remand and de novo adjudication. Now the Commissioner has given a finding. The only finding that has been agitated by Revenue is whether the process of making chandeliers amounts to manufacture. There is no dispute that this is not a process of manufacture and hence we find that since this issue has not been agitated by the respondents, therefore, we have nothing to say but to uphold the finding of the Commissioner that the process of making chandeliers amounts to manufacture.

5. We note further that the appellant had claimed the benefit of small scale exemption which was granted by the learned Commissioner. This granting of the benefit as small scale unit has not been challenged before us. Thus the appeal filed by Revenue fails on merit. The appeal of Revenue is , therefore, rejected.