Grasim Industries Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-13-2002

Reported in : (2003)(86)ECC141

Judge : K Usha, N T C.N.B.

Appellant : Grasim Industries

Respondent : Cce

Judgement :
1. Challenge in this appeal at the instance of the assessee is against the order passed by the Commissioner (Appeals) Jaipur dated 7.2.2001.

The main contention raised by the appellant is that the Commissioner (Appeals) has not decided the appeal be merits and dismissed the same as not maintainable on the ground that the appellant had not filed any appeal against order dated 9.12.96 and 5.5.98.

2. The learned Counsel points out that the communication dated 9.12.96 cannot be treated as an order since it was issued in connection with the declaration filed by the appellant under Rule 57-G and that no such order is contemplated under the above rule. Sub-rule (1) of Rules 57G indicated that "every manufacturer intending to take credit of the duty paid on capital goods under Rule 57A or Rule 57B shall file a declaration with the Assistant Commissioner of Central Excise having jurisdiction over has factory indicating the description of products

manufactured in his factory and the inputs intended to be used in the said final products and such other Information as the said Assistant Commissioner may require, and obtain a dated acknowledgement of the said declaration". Thus, the above Rule would show that what required by the assessee was only to get a dated acknowledgement of the declaration. Apart from the above the learned Counsel points out that the Revenue itself had not treated the communication dated 9.12.1996 as an appealable order as subsequently in respect of all the items covered by letter dated 9.12.96, separate show cause notice had been issued in respect of some of the items claimed by the assessee was even accepted.

He admitted that these matters are pending in appeal separately before the Commissioner (Appeals). As far as letter dated 5.5.98 is concerned, the learned Counsel pointed out that it is only a communication calling for certain details. After receipt of such communication of appellants were called for the personal hearing. Therefore, the letter dated 5.5.98 also can (sic) (cannot) be treated as an appealable order. We heard the learned Departmental Representative also. The learned Departmental Representative submits that during the relevant period orders as the one contained in letter 9.12.98 were being passed on receipt of the declaration under Rule 57G. But, at the same time, in the present case it is not denied that subsequently in respect of each item covered by the said letter dated 9.12.96 separate show cause notices were issued and separate proceedings were initiated.

3. In the light of the above, we find that the Revenue as well as party have not treated the letter dated 9.12.96 as an appealable order. On going through the letter dated 5.5.98 it is clear that the letter is not in the nature of an order or at any rate an appealable order. For this reason we hold that the Commissioner (Appeals) should have considered the appeal on merits. We, therefore, set aside the impugned order and remand the matter to the Commissioner (Appeals) for considering the appeal on merits.