Commissioner of Central Excise Vs. Jindal Texofab Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-08-2003

Reported in : (2002)(150)ELT102Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Commissioner of Central Excise

Respondent : Jindal Texofab Ltd.

Judgement :

1. The respondent to this appeal seeks adjournment. Having heard the departmental representative, we have decided to dispose of the appeal itself.

2. The ground in the appeal by the Commissioner in the order of the Commissioner (Appeals) is that his order remanding the matter to the adjudicating authority is not in accordance with law. Sub-section (3) of Section 35A of the Act which reads as "the Commissioner (Appeals) may wish, after making enquiry that may be necessary pass such orders as he thinks just and proper confirming, modifying or annulling the decision or order appealed against it." It is contended that prior to its amendment the words of the section as they now stand, the sub-section besides providing that the Commissioner may pass such order as it deems fit confirming, modifying or annulling the order appealed against, provided that he may refer the case back to the adjudicating authority with such direction as he may think fit for fresh adjudication.

3. In his judgment in UOI v. Umesh Dhamode 1998 (98) ELT 584, the Supreme Court did not accept the view expressed by the judiciary Goa, Daman's judgment made before him that Section 128(2) of the Customs Act, 1962 did not vest the appellate authority with the power. It said that the provision which vested the appellate authority with power to pass such order as it deems fit confirming, modifying or annulling the decision of the order appealed against. It said although the portion of the direction read together necessarily imply that the appellate authority has the power to set aside the decision which is under appeal before him and remanding the matter to the appellate authority for fresh decision. Section 128(2) of the Customs Act which was under consideration by the Court is identically worded as Sub-section (3) of Section 35A except that the later section used the words "it is such order as he may think just and proper" instead of the words "such order as he deems fit." We do not think this slight difference in terminology makes any material decision. Therefore, the ratio of the Supreme Court would apply.

4. The fact that the Sub-section 35AB was amended so as to do with the words which specifically empower the Commissioner (Appeals) does not by itself lead to the conclusion that subsequent to the amendment he had no power to do so. It is perfectly possible that these words were omitted because they were unnecessary.Vipor Chemicals P. Ltd. v. CCE 2002 (144) ELT 385 would not be good law as it did not; in the light of the Supreme Court judgment which was not cited before it.