

Cce Vs. Ish Rolling Mills

Cce Vs. Ish Rolling Mills

SooperKanoon Citation : sooperkanoon.com/32570

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-08-2003

Reported in : (2004)(91)ECC21

Judge : A T V.K., P Chacko

Appellant : Cce

Respondent : ish Rolling Mills

Judgement :

1. This is an appeal, filed by the Revenue, against the Order-in-Appeal No. 202/2003 dated 13.5.2003.
2. Shri O.P. Arora, learned SDR, submitted that the respondents, M/s.

Ish Rolling Mills, manufacture hot rolled untrimmed sheets/circles of copper alloy; that they were clearing the said goods on payment of duty till 28.2.94; that after budgetary changes, they surrendered the Central Excise Registration Certificate on the ground that the impugned goods had been brought under SS! exemption under Notification No.1/93-CE; that as the respondents had cleared the goods valued at more than Rs. 75 lakh upto February 1994, they were liable to pay duty on the goods cleared in March 1994; that the demand was confirmed against them which went upto Tribunal, which remanded the matter vide Final Order Nos. E/378 to 393/97-B dated 6.3.1997 in the case of Aggarwal Rolling Mills v. CCE, New Delhi, 1997 (93) ELT 615. Learned SDR, further, submitted that in the de novo

proceedings, the Deputy Commissioner has confirmed the demand against the respondents disallowing the benefit of Notification No. 214/86-CE as the supplier of the raw-material had not observed the conditions specified therein; that, however, the Commissioner (Appeals) in the impugned order, has set aside the adjudication order on the ground that the Tribunal, while remanding the matter, has held that the duty liability, if any, which may arise in the case of non-fulfilment of the conditions prescribed in para 2 of Notification No. 214/86, would lie on the supplier of the raw-material or semi-finished goods. The learned SDR, further, submitted that the CEGAT had remanded the matter to the adjudicating authority for de novo consideration in the light of above observations and law; that it means that the adjudicating authority was free to adjudicate in the light of observations and prevalent law on the subject; that as the conditions stipulated in Notification No. 214/86 had not been complied with by the supplier of the raw-material, the goods manufactured by the respondents, are liable to Central Excise duty; that it is a settled law that it is the manufacturer, who has to pay Central Excise duty at the time of clearance of the goods; that the Appellate Tribunal has held in the case of *Jinabakul Forge Pvt. Ltd. v. CCE, Belgaum.. 1997 (93) ELT 375 (T)* that duty is payable by the manufacturer of the goods when procedure of Notification No. 214/86 has not been followed. Ld. SDR emphasised that there are two different decisions of the Tribunal on the interpretation of Notification No. 214/86 and the matter has to be decided in the light of the settled legal position that the supplier of raw-material is not the manufacturer and the manufacturer is the person, who actually manufactures the goods and accordingly duty liability is to be discharged by the respondents, who are the manufacturers.

3. Countering the arguments, Shri J.S. Agarwal, learned Advocate, submitted that the Tribunal has very specifically held in para 21 of the remand order that "duty liability, if any, which may arise in case of non-fulfilment of the conditions prescribed in para 2 would lie on the supplier(s) of the raw-material or semi-finished goods as the responsibility has been explicitly goes on him as a principal manufacturer." He contended that the matter was remanded to the adjudicating authority for de novo consideration in the light of the observations contained in the remand order and in accordance with law; that the Department had not challenged such findings of the Appellate Tribunal in the higher Appellate Forum and,

therefore, the Adjudicating authority is bound by the findings of the Tribunal in the remand order.

He relied upon the decision in the case of CCE, Indore v. Hindustan Lever Ltd., 4. We have considered the submissions of both the sides. It is not disputed by the Revenue that the Order-in-Original was passed by the Deputy Commissioner on remand by the Appellate Tribunal in Aggarwal Rolling Mills case (supra). The Appellate Tribunal, while remanding the matter, has considered the question of eligibility of the appellants to Notification No. 214/86 and clearly held that the duty liability, if any, would lie on the supplier of the raw-material. It is not the case of the Revenue that this finding recorded by the Appellate Tribunal in the remand order, was challenged in any higher Appellate Forum. Once the finding of the Tribunal has not been challenged, it is binding on the authority while adjudicating the matter on remand. In de novo proceedings, the adjudicating authority cannot go beyond the remand order. The Commissioner (Appeals) has referred to the decision of the Calcutta High Court in the case of Scientific Instruments Co. Ltd. 1980 ELT 89 (Cal) wherein it has been held that when an order is remanded with specific directions, the powers and jurisdiction of lower authority is limited to the extent the case is remanded back. The learned Commissioner (Appeals) has also relied upon the decision of the Tribunal in the case of CCE, v. Eupharma Laboratories, 1989 (43) ELT 471 (T) wherein the Tribunal has held that readjudicating authority cannot go beyond the terms of the directions of remand of the superior Appellate authority. The Calcutta High Court has, further, observed that in remand cases, entire matter is not at large before the lower authority nor such authority is free to decide the case in his own way.

The different view taken by the Tribunal in another case cannot be relied upon by the adjudicating authority against specific findings in the case of the respondents themselves by the Tribunal, which has not been set aside. Accordingly, we do not find any reason to interfere with the impugned order passed by the Commissioner (Appeals). The appeal, filed by the Revenue, is rejected.