

Commissioner of Central Excise Vs. Spintech Inc.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-13-2003

Reported in : (2004)(163)ELT367TriDel

Judge : A T V.K., P Chacko

Appellant : Commissioner of Central Excise

Respondent : Spintech Inc.

Judgement :

1. Revenue has come in appeal against the Order-in-Appeal No. 98/2003, dated 20-3-2003, by which the Commissioner (Appeals) has set aside the demand of Central Excise duty and penalty imposed on M/s. Spintech Inc.
2. Shri Kumar Santosh, learned S.D.R., submitted that the respondents manufacture synthetic yarn and avail of the Modvat Credit of the duty paid on the inputs; that on physical verification of the inputs by the Central Excise officers on 14-9-98, inputs involving Central Excise duty of Rs. 2,20,95470, were found short; that some private records were also resumed from the factory premises, which showed production and blending of various ingredients; that a show cause notice dated 25-2-99, for the recovery of duty on the shortage of inputs, was issued to the respondents, which was subsequently/ adjudicated by the Assistant Commissioner of Central Excise demanding duty and imposing a penalty; that, however, the Appellate Tribunal, vide Final Order No.A/110/2003-NB(S), dated 28-1-2003, allowed the appeal and remanded the matter to the original authority for de novo

adjudication, which is pending. He, further, submitted that subsequently, another show cause notice dated 9-3-2001 has been issued to them on the ground, inter alia, that they had manufactured polyester yarn valued at Rs. 30 lakh involving duty of Rs. 6,21,000/- by using the same inputs, in respect of which first show cause notice was issued, and cleared the same clandestinely without entering in the R.G. I register and without payment of duty; that the Additional Commissioner in Order-in-Appeal No. 82/2002, dated 6-5-2002, has confirmed, the demand and imposed a penalty, which has been set aside by the Commissioner (Appeals) under the, impugned order holding that the proceedings are without jurisdiction and there is nothing on record that any fresh evidence or material had come to the notice of the adjudicating authority, which necessitated the re-opening of the earlier order. The learned S.D.R. also submitted that first show cause notice has not attained the finality inasmuch as the case has been remanded by the Tribunal with the direction to re-adjudicate the case after taking into account all the records mentioned and annexed to the Panchnama and also documentary evidences, subsequently, produced by the respondents; that the case of the Department is that the inputs were used in the manufacture of yarn; that both the show cause notices are inter-linked which has led to the Commissioner in allowing the appeal of the respondents on jurisdiction.

3. Countering the arguments, Shri P.C. Jain, learned Advocate, submitted that the present show cause notice is based on the same identical facts on the basis of which a show cause notice had been earlier issued and adjudged by the competent authority; that the issue of another show cause on the same facts is clearly illegal. He relied upon the decision of the Karnataka High Court in the case of A.C.C.Ltd. v. Union of India, 1996 (88) E.L.T. 348 (Karnataka), wherein it has been held by the Karnataka High Court that the order of adjudication must acquire finality and repeated show cause notices cannot be issued after completion of adjudication proceedings. Reliance has also been placed on the decision in the case of Jain Shudh Vanaspati Ltd. v. C.C., 1990 (49) E.L.T. 179 (Cal.), wherein it has been held by the Calcutta High Court that once an adjudication order has been passed, it is not open to go ahead again for another adjudication order and re-open the earlier order.

4. We have considered the submissions of both the sides. It is not the case of the Department that the present show cause notice dated 9-3-2001 has been issued on the basis of searches conducted separately at a subsequent date or on the basis of record seized subsequently. The officers of the Central Excise Department had visited the premises of the respondents on 14-9-98 and found shortage in the stock of inputs and accordingly duty was demanded from the respondents treating the inputs having been cleared without payment of duty. Once the Department has issued the show cause notice demanding the duty on the quantity of inputs found short, the Department now cannot claim that the said inputs were not cleared as such, but were used in the manufacture of yarn, which had been cleared clandestinely. The mere fact that the Tribunal has remanded the matter to the adjudicating authority for re-adjudication, will not make the Department eligible to change their stand by issuing another show cause notice on the same facts and same documents which were recovered on 14-10-98. Accordingly, we do not find any infirmity in the impugned order passed by the Commissioner (Appeals) and reject the appeal, filed by the Revenue.

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