SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Collector of Central Excise Vs. U.P. State Sugar Corpn. Ltd.

Collector of Central Excise Vs. U.P. State Sugar Corpn. Ltd.

SooperKanoon Citation : sooperkanoon.com/3299

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-13-1987

Reported in : (1987)(11)LC539Tri(Delhi)

Judge : P Jain

Appellant : Collector of Central Excise

Respondent : U.P. State Sugar Corpn. Ltd.

Advocate for Def. : Shri. H.P. Arora

Judgement :

1. The applicant-Collector has raised the following questions of law arising out of Tribunal's Order No. A-504/86-NRB and Misc. 237/86-NRB dated 30.9.1986 in Appeal No. E/1385/84-NRB and Order No. A/519/86-NRB and Misc. 242/86-NRB dated 30.9.1986 in A. No ED/SB/1386/84-NRB: (i) Whether destruction of excisable goods without the permission of the competent Central Excise authorities and fulfilment of conditions as might have been imposed by the Collector of Central Excise by order in writing under Rule 49(i) but with the permission of the U.P. Excise authorities can be called a violation of technical nature, consequently setting aside the demand of duty and reduction in penalty when the Rule 49 permits remission of duty only when the manufacturer claim their goods as unfit for consumption or for marketing before the proper Central Excise officers and subject to other condition as may be imposed by the Collector Central Excise by order in writing.

(ii) Whether remission of duty under rule 49(1) may be extended to the respondent even when they took no steps to observe provisions of Central Excise law and procedure and particularly when they totally disregarded the Central Excise authorities and unilaterally went ahead with the draining out of molasses without proper compliance of Rule 49(1). It also needs to be considered whether this benefit may be extended to the respondent factory who has been holding a Central Excise licence for last many years and was well aware with the Central Excise law and procedure.

(iii) Whether the destruction of goods without permission of the proper officer and fulfilment of condition as may have been imposed by the Collector by order in writing, for continuous two occasions i.e. 18.12.1982 and 24.11.1983 is not a deliberate violation of the provisions of Central Excise Rule 49 and law and in view of above whether it was proper for the CEGAT to reduce the penalty holding that there was no deliberate intention to cause the violation.

(iv) Whether in this present order, the Hon'ble Tribunal has not gone against their earlier decision in case of Collr. Central Excise Meerut v. Triveni Engg. Works Order No. A. 411/86-NRB and Misc./181/86-NRB, facts of which are almost identical to the present case in which CEGAT held that "this indicate that the factory had considered the control over production and clearance of molasses as the primary concerned of the state excise. The draining out of molasses without satisfying the Central Excise officer that the excisable goods had become deteriorated is clearly ignoring the provisions of rule 49 of Central Excise Rules which clearly lays down that proper officer of Central Excise may not demand duty due on any goods claimed by the manufacturer as unfit for consumption or for marketing subject to such conditions as may be imposed.

Therefore, to have drained out the molasses which are dutiable goods without complying with the provisions of rule 49 as aforesaid is clearly a violation of Central Excise rules. The plea that it was done with the approval of state excise authorities will not mitigate the offence...".

(v) Whether in the facts and the circumstances of the case, the conditions of second proviso to Rule 49(i) of the Central Excise Rules, 1944 can be said to have

been complied with.

(vi) Whether in the facts and circumstances of the case it was not obligatory on the part of the respondent to seek prior permission of the proper officer/Collector, Central Excise, Meerut for destruction of the goods and thereafter comply with the conditions as may have been imposed by the Collector by order in writing.

2. The learned SDR appearing for the applicant-Collector has stated that it is a question of law where different decision has been taken by the Tribunal in Order No. A. 411/86-NRB and Misc. 181/86-NRB dated 23.7.1986 in the case of Collector of Central Excise, Meerut (appellant) v. Triveni Engineering Works (Respondent) [1987 (10) ECR 365 Cegat]. On almost identical facts and circumstances, he also reiterated the other questions of law referred to in Sl. Nos. (i)-(iii) & (v')-(vi) above. He also drew attention to the facts that the Tribunal's earlier order No. A. 411/86-NRB dated 23 7.1986 mentioned supra relies upon Supreme Court judgment in the case of Khandelwal Metal and Engineering Works v. Union of India wherein it has been held that "substandard goods which are produced during the process of manufacture may have to be disposed of as rejects or scrap; but they are still the products of manufacturing process." 3. Learned advocate Shri H.P. Arora, appearing for the respondent-non-applicant has stressed that the questions raised by the Collector at sl. Nos. (1)-(iii) and (v)-(vi) are merely questions of fact. Question raised at sl. No. (iv) can be said at the most to be a question of law. He however, pointed out that the said order of the Tribunal is clearly wrong in applying the Supreme Court judgment to the facts and circumstances of that case of M/s. Triveni Engineering Works 1987 (10) ECR 365 Cegat. Supreme Court had made an observation, according to the learned advocate, in the context of scrap or waste manufactured as a marketable commodity during the process of manufacture of goods whereas in the case before this Bench or in the case of M/s. Triveni Engineering Works 1987 (10) ECR 365 Cegat.

molasses had already been manufactured and it had got deteriorated to have become unfit for marketing and consumption. Supreme Court was not at all interpreting the scope of second proviso to Rule 49(1) of the Central Excise Rules.

The question before the Supreme Court in that case was the validity of duty leviable on copper waste and scrap or whether any additional customs duty in terms of Section 3(1) of the Customs Tariff Act, 1975 was leviable on the imported Brass scrap.

4. I have carefully considered both the Reference applications which are identically worded and the alleged questions of law raised by the applicant-Collector as stated above. I observe that except the question at sl. No. (iv) of other questions stated above are questions of fact.

The question whether procedural breach committed by the respondent-non-applicant is technical or substantive is a question which has been decided on the basis of peculiar facts of the case namely that the respondent-non-applicant had always kept informed the Central Excise authority about the nature of the goods being unfit for marketing or consumption or the date of destruction of the goods. If the Central Excise authorities did not respond timely to the copies sent by the respondent-non-applicant, he cannot be denied the benefit of the provisions of second proviso to Rule 49(1) of the Central Excise Rules, 1944.

5. As regards question at sl. No. (iv), I observe that the order No.A-411/ 86-NRB and Misc. 181/86-NRB dt. 23.7.1986 passed by the learned brother Sh. K.S. Venkataramani was not cited before this Bench when the order Nos. 504 & 519/86-NRB dt. 30.9.1986 were passed. The only case cited before the Bench was the case of Dhampur Sugar Mills as stated in the said order and that case was rightly distinguished by the learned advocate Sh. H.P. Arora. Even otherwise, I agree with the plea made by the learned advocate for the respondent- non-applicant that the reliance placed on Supreme Court judgment in the case of Khandelwal Metal and Engineering Works (1985 ECR 2571 SC) has no application to the facts and circumstances of the case of Triveni Metal and Engineering Works [1987 (10) ECR 365 Cegat] and accordingly the facts and circumstances of this case, that the judgment of Supreme Court has rightly pointed out, does not determine the scope of second proviso to Rule 49(1). That judgment deals with much larger issue of the validity of Central Excise duty or of additional customs duty on Copper waste and scrap. It has also been rightly pointed out by

the learned advocate that the copper waste and scrap which has been held to be dutiable by the Hon'ble Supreme Court is one which is marketable commodity. In the instant case however, Molasses are unfit for marketing and consumption and in view of the specific provision to second proviso to Rule 49(1), question of charging duty on such molasses would not arise. In view of the unambiguous position of the Rule, I do not consider the question raised at sl. No. (iv) to be a question fit for referring to High Court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com