Commissioner of Central Excise Vs. H and R Johnson Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-11-2004

Reported in : (2004)(170)ELT289TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : H and R Johnson Ltd.

Judgement :

1. None has come present on behalf of the respondents. No re- quest for adjournment has been also received. Therefore, I proceed to decide the appeal on merits.

2. In this appeal, the Revenue has questioned the validity of the impugned order-in-appeal vide which the Commissioner (Appeals) has reversed the order-in-original on the simple ground that no show cause notice was served on the respondents before confirming the duty and penalty on them. I have heard the SDR and gone through the record.

3. From the record, it is evident that the officers of the Central Excise visited the factory premises of the respondents on 19-11-1997 and carried out physical verification of the stock of finished goods and raw material laying therein, The verification continued till 20-9-97. On verification, certain discrepancies were found which were recorded in the panchnama prepared in the presence of independent

witnesses regarding the excess/shortage of the stock, detailed in the panchnama for which the respondents could not offer any explanation.

The excess stock of the goods found (2,189 boxes of wall tiles and 3,342 boxes of floor tiles) was seized. The respondents paid the entire Central Excise duty on the raw material found short. The duty paid by them was of Rs. 4,46,316/- vide PLA Entry No. 391, dated 20-11-97.

4. It is also evident from the order-in-original that the respondents through their letter dated 20-11-97 requested the Additional Commissioner of Central Excise for waiver of the show cause notice and requested for early adjudication. Thereafter, the case was put up before the Additional Commissioner. They appeared for personal hearing before him who made them know about the allegations against them. The respondents even submitted submissions in writing dated 16-4-98. They contested the claim of the Department during the adjudication proceedings by denying removal of the goods without payment of duty and the difference between the physical stock and the recorded stock of the goods. They also relied upon certain case law as detailed in Para 7 of the order- in-original. The adjudicating authority after considering their written submissions and the case law referred by them confirmed the duty demand, imposed penalty as detailed in the order-in-original.

5. The Commissioner (Appeals) without going into the merits of the order-in-original, has reversed the same on the simple ground that the show cause notice was served on the respondents in terms of Section 11A of the Act. He has relied upon the ratio of law laid down by the Apex Court in Union of India v. Madhumillan Syntex P. Ltd. -1988 (35) E.L.T.349 and CCE v. Kosan Metal Products - 1988 (38) E.L.T. 573 wherein it has been observed that without issuance show cause notice no duty demand can be confirmed under Section HA. But in my view, the learned Commissioner (Appeals) has miserably failed to appreciate the facts and circumstances under which show cause notice was not served on the respondents. There is no dispute with the proposition of the law laid down by the Apex Court in the above referred cases. But the benefit of the same could be allowed to the respondents only if the respondents had not voluntarily waived

service of the show cause notice on them.

After the waiver in writing, it was not essential under the law to still serve the show cause notice on the respondents. Besides this, the respondents were given personal hearing by the adjudicating authority before whom they even submitted written submissions and contested the mode of physical verification of the stock, allegations of the clan- destine removal of the goods and their liability to pay duty in respect thereof. Under these circumstances the proposition of law laid down in Madhumilan Syntex P. Ltd. and Kosan Metal Products (supra) could not be made applicable to the respondents' case. The learned Commissioner (Appeals) has not gone through the facts narrated in the order-in-original before passing the impugned order. He has not cared to decide the matter on merits and hastily reversed the order-in-original on the ground that no show cause notice was issued.

The approach of the learned Commissioner (Appeals) to the case had been very casual and without application of mind. Therefore, the impugned order of the Commissioner (Appeals) cannot be sustained and is set aside. The matter is sent back to the Commissioner (Appeals) for deciding the matter on the merits. The appeal is allowed by way of remand.