Commissioner of Central Excise Vs. Eastern Electricals

Commissioner of Central Excise Vs. Eastern Electricals

SooperKanoon Citation : sooperkanoon.com/34541

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-11-2004

Reported in : (2004)(167)ELT527TriDel

Judge : K Usha, N T C.N.B.

Appellant : Commissioner of Central Excise

Respondent : Eastern Electricals

Judgement :

1. The issue raised in these appeals at the instance of the Revenue is identical. We had occasion to consider the same issue in our Final Order Nos. 142-149/04-NB(A), dt. 3-3-2004 where the Commissioner (Appeals) had issued identically worded orders.

2. We took the view that the Commissioner (Appeals) has correctly come to the conclusion that the ratio of the decision of this Tribunal in 2000 (119) E.L.T. 191 (T. - LB) = 2000 (38) RLT 637 is no longer good law in the light of the decision of the Hon'ble Supreme Court in Escorts JCB Ltd. v. CCE reported in 2002 (146) E.L.T. 31 (S.C.). We observed that the Commissioner had come to a conclusion that the sale has taken place at the factory gate and therefore, ratio of the above decision regarding inclusion of freight and insurance charges would be directly applicable. Further we took the view that the observation made by the Commissioner regarding the verification has to be treated as superfluous and not as an order of remand. We, therefore, dismissed the appeals and disposed of the

cross-objections.

3. It is pointed out by ld. DR that the Commissioner (Appeals) who passed the common order himself was adjudicating authority in some of the cases. There will be no doubt about the grave impropriety committed by the Commissioner (Appeals) in sitting over judgment of his own orders. But taking into consideration the fact that the issue involved is covered by the decision of the Hon'ble Supreme Court and that he has taken the same view in appeal against his own order as well as orders passed by other adjudicating authorities and since the amounts involved are not substantial, we do not see it is necessary to send back the matter to another Commissioner for considering the appeals on merits.

Even if we send back the matter to another Commissioner he can only take a view in consonance with the ratio of the decisions of the Hon'ble Supreme Court. Under these circumstances, we decline to interfere with the orders and the appeals, stand dismissed.

Cross-objections are also disposed of.