Commissioner of Central Excise Vs. Sukhrim Synthetics Processors

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-28-2004

Reported in : (2004)(172)ELT351Tri(Mum.)bai

Judge : A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Sukhrim Synthetics Processors

Judgement :

1. This is a Revenue's appeal against the order of the Commissioner (Appeals) who in the impugned order set aside the order passed by the lower authority on the grounds that it is a non speaking order and passed without application of mind. The Commissioner (Appeals) found that the lower authority while adjudicating the case has not given any justification or quoted any authority that as to how and why he had adjudicated the show cause notice which was answerable to Commissioner of Central Excise, Mumbai-III. He further found that para 2 of page 6 of show cause notice dated 13-9-96 does not cover the issue decided by the lower authority. It appears that the disputed issue is not of para 2 of page 6 but it is covered under para 12 (2) of page 6 of the show cause notice. These were the findings of the lower authorities.

2. The Revenue contends that the Joint Commissioner was empowered to adjudicate the case even though the show cause notice was made answerable to Commissioner. Under Trade Notice No. 62/M-III/General (32)-97 Joint

Commissioner has been empowered to adjudicate cases involving fraud, suppression, etc wherein amount of duty involved is upto Rs. 10 lakhs. The second ground of the revenue is that the issued decided by the Jt. Commissioner is the one mentioned that para 12(2) of page 6 of show cause notice. However, the Jt. Commissioner wrongly mentioned para 2 of page 6 due to typographical mistake.

3. The issue is whether the Jt. Commissioner was right in adjudicating, the show cause notice answerable to the Commissioner. Irrespective of what the trade notice says the show cause notice should have been properly amended giving an opportunity to the noticee mat he has to answer the charges against him to a particular officer who would adjudicate the case. Nothing of this seems to have been done in this case. The Commissioner (Appeals) was right in holding that the Joint Commissioner should not have adjudicated the case. I have also perused the order of the original authority. He was dealing the issue under a mistaken impression that the matter before him pertained to para 2 of page 6 of the show cause notice whereas the issue before him was in regard to the allegation in para 12(2) of page 6 of the show cause notice. It is not a typographical error as contented by the revenue. In the proceedings before him the original authority was dealing with the issue of non-accounting of finished goods in RG1 maintained by the respondents. These goods were accounted for and were subsequently cleared on payment of duty. The original authority confirmed this duty and but since the goods were already released he imposed a fine of Rs. 50,000/-on the goods. Strictly speaking what the Commissioner has set aside is the fine with the observation that the lower authority passed the order without application of mind and in a way it is correct. 4.

The appeal of the Revenue is rejected.