Commissioner of Central Excise Vs. Saibaba Ship Breaking Co. and H.B.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-24-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Saibaba Ship Breaking Co. and H.B.

Judgement :

1. The Revenue is in appeals. The respondents are assessee under the Central Excise Act, 1944. They were issued a notice to recover duties on excisable goods obtained by breaking of old ships, imported by them, in an area which is opposite and outside the premises registered under the Central Excise Act, 1944. The Assistant Commissioner of Central Excise confiscated the excisable goods seized and imposed a fine of Rs. 2.00 lakhs in lieu of confiscation and confirmed the demand of Rs. 218337 and imposed penalties on the importers and partners. Being aggrieved by this order, the Respondents took up in appeal before the Commissioner (Appeals), who dropped the case, after coming to the conclusion: i) the Show Cause Notice did not ask the respondents to produce the goods physically which were released provisionally for confiscation.

ii) The goods seized were lying in the premises though unregistered but were not in a condition that the bona fide could be doubled to exist that they have been kept for removing them clandestinely, since after provisional release, the respondents had accounted for goods in the stock account and cleared them on payment of duty from PLA or RG23A Part II. Therefore, he found that the respondents had no intention to clandestinely remove the excisable goods to evade payment of Central Excise duty as alleged.

iii) In view of the findings, he found that the order of confiscation was incorrect arrived at as the goods were not liable for confiscation for the reason that there was no circumstances which could establish that the same were not fully manufactured condition ready to despatch and that there was an intention to evade duty.

iv) Since the goods were provisionally released and the appellants were not called upon to physically produce the goods, confiscation was a notional confiscation and same were not tenable under law.

Consequently, the option to redeem the goods was illegal and the appropriation of security bond amounts bad in law.

2. The Revenue has filed these appeals on the grounds that the department has preferred an appeal against the order of the adjudicating authority who had erred in adjudicating the case, as he did not have, in terms of the Circular appearing 328/44/97-CX dated 13.8.1997 issued by the Central Board of Excise & Customs, the competence for deciding the case in which evasion of Central Excise duty exceeded Rs. 2.00 lakhs. The appellate authority has based the appellate order on the appeals filed by the respondents without passing any order in respect of the appeals filed by the department.

3. Heard both sides and considered the issue, and it is found that the appeals of Revenue before the Commissioner (Appeals) against the same Order-in-Original were subsequent to the order of CCE (Appeals).

Therefore, following the decision of the Larger Bench in the case of LML Ltd v. CCE 2002 (143) ELT 431, we find no merits in the appeals of the Revenue in this case made out. More so, and we do not find any restriction on the" powers of the Assistant Commissioner to adjudicate the case vide Section 33 of the Central excise Act 1944 read with Notification MF (DR) No. 8/CE dated 2.9.1944, 12/CE dated 1.7.52 and 93/59 CE dated 8.11.1959 and 28/79-CE dated 10.11.1979 which confer the powers on the Assistant Collector under the provisions of Section 33 the powers to adjudicate as available to the Commissioner (Collector) of Central Excise as indicated as per Clause (c) of Section 33. No further grounds merit to call for an interference in the order of the Ld Commissioner (Appeals).