Commissioner of Central Excise Vs. Polson Ltd. and ors.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-22-2004

Judge : A T Moheeb

Appellant : Commissioner of Central Excise

Respondent : Polson Ltd. and ors.

Judgement :
1. These appeals by the Revenue arose out of the order of the Commissioner (Appeals) who in the impugned order held that he had no power to remand the matter to the original authority after amendment to Section 35A by the Licence Act, 2001 w.e.f. 11.5.2001. It appears that the Revenue filed an appeal to the Commissioner (Appeals) against the order of the lower authority with a sole prayer that he should remand the matter back to the Assistant Commissioner. The Commissioner (Appeals) ruled that since he had no power to remand and no supplementary prayer had been made before him to deal with the matter in any other manner he had no other option except to dismiss the appeal filed before him by the Revenue.

2. The Revenue is in appeal against this order before the Tribunal. The grounds are that the Commissioner (Appeals) has not considered the merits of the case and confined himself to the prayer made by the appellant department and that he erred while deciding the case that he has no powers to remand the case for de novo adjudication in view of the amended Section 35AQ (3) of Central Excise Act. The Revenue also relied on the case of CCE, Bhubaneshwar v. Indian Aluminium

Co. Ltd. [2002 (50) RLT -92 (CEGAT-KOL)] wherein the Tribunal held that the power to remand a matter is inherent with the appellate authority. The prayer was that the order of the Commissioner (Appeals) be set aside and the alternative order as deemed fit may be passed.

3. Heard both sides. It is observed that the Commissioner (Appeals) has dismissed the appeal of the department because the latter prayed before him to remand the matter to the original authority and no supplementary prayer was made. The Commissioner (Appeals) contention that he cannot remand the matter before him, in view of the amended Section 35A is supported by a Larger Bench decision in the case of Commissioner of Central Excise, Bhubaneshwar v. Oripol Industries [2003 ((155) E.L.T.278 (Tri.-LD)] wherein the Larger Bench held that Commissioner (Appeals) has no power of remand after the said Section has been amended. The Revenue's plea that the order of the Commissioner (Appeals) is wrong cannot be upheld, in view of the above mentioned Tribunal's decision. The appeals are rejected.