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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-29-2004

Reported in : (2005)(187)ELT474TriDel

Judge : S Kang, Vice-, A T V.K.

Appellant : Eon Polymers

Respondent : Commissioner of Central Excise

Judgement :

1. M/s. EON Polymers and their Managing Director and Director have filed these 3 appeals being aggrieved with the Order-in-Original No.41/2003, dated 15-7-2003 by which the Commissioner has confirmed the demand of duty and imposed penalty on all of them besides confiscating the goods.

2. Shri M. Chandershekharan, learned Sr. Advocate, submitted that the Appellant company is having a 100% E.O.U. as well as unit in the Domestic Tariff Area (D.T.A.) manufacturing PET bottles/jars/performs; that after the visit of the Central Excise Officers of their factory on 20-9-1998 a show cause notice dated 17-3-1999 was issued to them with a proposal to recover various amounts of Customs duty on capital goods and a proposal to confiscate the imported goods and imposition of penalty under Section 114A and Section 112 of the Customs Act besides proposing recovery of Central Excise duty, confiscation of indigenous goods and imposition of penalty under Rule 173Q and Rule 209A of the Central Excise Rules, 1944 on the ground that the Applicant company was manufacturing goods in 100%

E.O.U. and clearing the same in the D.T.A.by showing in the record that the said goods were manufactured in D.T.A. unit; that the Commissioner, Central Excise, Jaipur had confirmed vide Order-in-original No. 16/2000, dated 11-5-2000, among others, Central Excise duty amounting to Rs. 1,12,10,750/- in respect of 13,18,407 PET bottles; that on appeal filed by them the Tribunal vide Final Order Nos. 39-41/2001, dated 20-3-2001 as reported in 2001 (135) E.L.T. 1316 (Tri.) has set aside the Order-in-original dated 11-5-2000 and remanded the matter for re-computation of duty in respect of 13 lakhs bottles after determining their correct assessable value.

The learned Sr. Counsel further mentioned that in the impugned Order the Commissioner has confirmed the demand of Central Excise duty amounting to Rs. 65,22,477/- in respect of 31,14,646 PET bottles/performs. The learned Sr. Counsel contended that the Commissioner in confirming the Central Excise duty in respect of 31,14,646 PET bottles/performs has travelled beyond the scope of Remand Order as well as the show cause notice; that the perusal of the Remand Order and the first Order-in-original dated 11-5-2000 and show the cause dated 17-3-1999 will clearly establish that 13,18,407 PET bottles were the disputed goods alleged to have been removed clandestinely; that the Tribunal in Para 7 of the Final Order dated 20-3-2001 has remanded the matter to re-compute the duty in respect of 13 lakhs bottles after determining the correct assessable value. He, further, submitted that the duty liability on 13,18,407 PET bottles, in view of the decision of the Larger Bench of the Tribunal in the case of Himalya International Ltd. v. CCE and theHimalya International Ltd. v. CCE, Chandigarh , will work out to Rs. 1,78,393/- only as the goods cleared from 100% EOU into the DTA are to be assessed on the basis of effective rate of duty prescribed under Notification and not at Tariff rate whether permission of the Development Commissioner had been taken or not for clearing the goods into the D.T.A. Reliance has also been placed on the decision in the case of Euro Cotspin Ltd. v. CCE, Chandigarh - 2001 (127) E.L.T. 52 (T). He also mentioned that the Commissioner has imposed a penalty of Rs. 10 lakhs on Shri Sanjeev Malik, Director, though in the first Adjudication Order only a penalty of Rs. 5 lakhs was imposed on him; that it is well settled law that penalty cannot be increased in the de novo proceedings. The learned Sr.

Counsel, therefore, requested that the matters may be remanded to the Adjudicating Authority once again for deciding the matters afresh on all aspects involved. He also requested that if the matters are remanded a time limit may be fixed for expeditious disposal of the cases as these are pending since 1999. We also heard Shri S.M. Tata, learned SDR.3. After considering the submissions of both the sides we observe that the duty was demanded from the Appellants only in respect of 13,18,407 bottles. The Tribunal has clearly mentioned in Para 2 of the Remand Order dated 20-3-2001 that "the impugned Order confirmed the allegation and held that over 13 lakhs PET bottles had been clandestinely produced in the 100% E.O.U. and cleared without payment of duty to the D.T.A." The Tribunal while dealing with the demand of duty on PET bottles allegedly manufactured and cleared by the Appellants has held in Para 7 that "it is settled law that gross price realised by a manufacturer can only be treated as cum-duty price. The Commissioner was, therefore, clearly in error in demanding the duty after treating the sale price as assessable value. Therefore, the demand is required to be re-computed after determining the correct assessable value. The Appellants had rebutted the allegation of clandestine manufacture of goods in the E.O.U. The evidence produced by them has also not been fully weighed before passing the impugned Order. In these circumstances, the entire case is required to be re-adjudicated after giving the appellants an opportunity to present their case." The Tribunal had, therefore, remanded the matter for afresh Adjudication to the jurisdictional Commissioner.

4. It is settled law that in remand proceedings the Adjudicating Authority has to decide the matter within four walls of remand Order.

The Adjudicating Authority cannot travel beyond the scope of remand order. It has not been rebutted by the Revenue that the Commissioner has confirmed the demand of duty in respect of more than 31 lakhs bottles and performs whereas the remand order was only in respect of 13 lakhs bottles (13,18,407). Apparently the Commissioner has travelled beyond the scope of the remand order. This is evident from the findings contained in Para 96 of the impugned Order wherein the Commissioner has recorded that the demand of Rs. 1,12,10,750/- raised in the show cause notice does not relate to 13,18,407 bottles/performs only but relates to

31,14,646 bottles and performs i.e. 17,96,239 bottles/performs cleared from DTA unit plus 13,18,407 bottles cleared clandestinely . In view of this we are constrained to remand the present matters once again to the jurisdictional Adjudicating Authority with the direction to adjudicate the matters afresh within the four walls of the remand directions contained in our earlier Final Order dated 20-3-2001 as reported in 2001 (135) E.L.T. 1316 (Tri.). As we are remanding the matters to the Commissioner we are not deciding any of the issues raised by the Appellants who are at liberty to raise them once again before the jurisdictional Adjudicating Authority. As requested by the learned Sr. Counsel we will appreciate if the matters are re-adjudicated within 3 months from the date of receipt of this order as these matters are pending for more than 6 years. All the appeals are allowed by way of remand.

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