

Commissioner of Central Excise Vs. Advance Structural (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-12-2005

Reported in : (2005)(183)ELT262TriDel

Judge : P Bajaj, M T K.C.

Appellant : Commissioner of Central Excise

Respondent : Advance Structural (P) Ltd.

Judgement :

1. In this appeal, the Revenue has contested the correctness of the impugned order of the Commissioner (Appeals) vide which the learned Commissioner (Appeals) has reversed the order-in-original confirming the duty demand against the respondents after re-quantification in terms of the remand order of the Tribunal dated 30th March, 1999.

2. The learned SDR has contended that the excisability/durability of the goods in question was finally decided by the Tribunal vide Final Order dated 30th March, 1999 and the matter was remanded to the adjudicating authority only for re-quantification of the duty demand and as such the learned Commissioner (Appeals) could not travel beyond that order and record the finding that the goods in question were not excisable. The learned SDR has relied upon the observations of the Apex Court recorded in Para 70 of the Mafatlal Indus. v. U.O.I. -1997 (89) E.L.T. 247 (S.C).

3. On the other hand, the learned Counsel has contended that the learned Commissioner (Appeals) has not travelled beyond the remand order and that the judgment of the Patna High Court in the case of TISCO v. UOI -1988 (33) E.L.T. 297, on the basis of which the Tribunal confirmed the excisability/dutiability of the goods in question, had already been set aside by the Apex Court vide order dated 9th February, 2000 and as such the impugned order passed by the Commissioner (Appeals) is perfectly valid.

4. We find that the learned Commissioner (Appeals) has not examined the matter from the angle of the contention raised by both sides. The remand of the case by the Tribunal was only for re-quantification of the duty, after the Tribunal confirmed the excisability/dutiability of the goods on the basis of the above said referred judgment of the Patna High Court. The learned Commissioner (Appeals) was required to address herself to the question, whether in such a situation, the benefit of the judgment of the Apex Court reversing the judgment of the Patna High Court could be given to the respondents, when they themselves had not challenged the final order dated 30th March, 1999 of the Tribunal, or not. She was also required to take into account, as to whether she could go beyond the remand order, and reverse the order of the adjudicating authority which was in consonance with the remand order or not. Therefore, in our view, the matter deserves to be re-examined by the learned Commissioner (Appeals) on these questions. Consequently, we set aside the impugned order and sent the matter back to the Commissioner (Appeals) for fresh decision in the light of the observations made above. The appeal of the Revenue stands allowed by way of remand.

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