

Commissioner of Cus. and C. Ex. Vs. Somani Iron and Steels Ltd.

Commissioner of Cus. and C. Ex. Vs. Somani Iron and Steels Ltd.

SooperKanoon Citation : sooperkanoon.com/38112

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-15-2005

Reported in : (2005)(184)ELT201TriDel

Judge : N T C.N.B.

Appellant : Commissioner of Cus. and C. Ex.

Respondent : Somani Iron and Steels Ltd.

Judgement :

1. Perused the records and heard both sides. The Revenue's appeal is directed against the rejection of their appeal by Order-in-Appeal No.49-CE/Apl/Knp/2004, dated 13-2-2004. That Order-in-Appeal was passed against the corrigendum dated 26-10-2001 to the Order-in-Original No.200-DCK-II/Seiz/2000, dated 30-10-2000 issued by the Deputy Commissioner, C.Ex., Division II, Kanpur. The Commissioner (Appeals) has allowed the appeal of the assessee with the following observations : A personal hearing in the case was held on 20-2-2003 which was attended by Shri Amit Awasthi, Counsel and Shri K.K. Singh, Manager on behalf of the Appellants and submitted that the Adjudicating Authority has no power to review/issue addendum/errata where additional liability is being created. They further submitted that the "impugned case is squarely covered under M/s. Flocks India & Others. They also submitted that to sum up a functus officio cannot reopen the case.

I have carefully, gone through the case records, Appeal filed by the Appellants & records of personal hearing. The instant Appeal has been filed by the Appellants against corrigendum dated 26-10-2002 to Order-in-Original No. 200/DCK-II/Seiz/2000 dated 31-10-2000 under which additional liability is loaded on the Appellants. The Appeal filed by the Appellants against Order-in-original No. 2000/DCK-II/Seiz/2000 has already been disposed off separately. In the Appeal under reference I find that the Id. Adjudicating Authority has loaded additional liability of duty on the Appellants by way of issue of impugned corrigendum to Order issued after a period of nearly two years. I also find that substantive changes have been brought out by the corrigendum. Instead of issue of such corrigendum, the department should have filed the Appeal for such remedial steps, if necessary. The CBEC vide circular No. 502/68/99-CX., dated 16-12-1999 provides that "Where any significant changes in the order becomes necessary after the order has been issued which cannot be termed as clerical or typographical mistake, proposal for review may be mooted to appropriate authority instead of taking recourse to corrigendum." In the circumstances, I find that the Adjudicating Authority has acted beyond his power & corrigendum issued is liable to be set-aside.

Accordingly, I set aside the impugned Corrigendum C. No. V(15)337/Seiz/K-II/97, dated 26-10-2001 to the Order-in-original No. 200/DCK-II/SEIZ/2000, dated 30-10-2000 and allow the Appeal No. 6-CE/APPL/KNP/2002 filed by the Appellants with consequential relief.

2. The contention of the learned Counsel for the respondent is that the corrigendum was entirely contrary to legal provisions and also the instructions of Central Board of Excise and Customs and there was no error or illegality in the Order-in-Appeal of the Commissioner (Appeals) in allowing the appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com