Wep Peripherals Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : May-11-2005

Judge : S Peeran, J T T.K.

Appellant : Wep Peripherals Ltd.

Respondent : Cce

Judgement :

1. Both these appeals raise a common question of law and facts and hence they are taken up together for disposal as per law. The appellants' grievance is that the Commissioner (Appeals), by his OIA No. 50/2001 dated 24.01.2001, clearly upheld the assessees' contention that the assessments were provisional and he remanded the matter to the original authority to finalise the provisional assessments in determining the duty liability against the appellants. The appellants had contended that they were also eligible for refund in view of the lesser price paid on the spares while clearing from their depot. The Department had claimed duty on the lesser price at which the spares were sold from the depot. It is the contention of the appellants that the original authority was required to have finalized the assessments by taking into consideration the claims of refund of the assessee and the duty demand. The same was done in terms of law and in terms of the Apex Court judgment rendered in the case of Mafatlal Industries as well as the Tribunal rulings in the case of Star Paper Mills Ltd. - 2000 (122) ELT 114 and that of Needle Industries (I) Ltd. - 1998 (101) ELT 286 when the duty liability could be negligible. He submits that the original authority, on de novo, did not follow the

terms of the Commissioner (Appeals)'s OIA No. 50/2001-CE dated 24.01.2001 and on a different footing held that there was no provisional assessment. It is the contention of the learned Counsel that the OIA No. 50/2001 dated 24.01.2001 has become final as the Revenue has not challenged this order holding the assessments to be provisional. Therefore, the OIO and the impugned order confirming that there was no provisionality, is not a correct order and does not have legal force. He submits that once the Commissioner, in the earlier proceedings has held that the assessments were provisional and the same was not appealed by the Revenue, therefore, that order cannot be differed by the original authority and confirmed in the impugned order. The learned Counsel took us to the record to show that the assessments were provisional and the mere fact that the bond was not executed for a period prior to June 1998 is of no consequence. The Commissioner (Appeals) has erred in holding that in terms of Rule 9B, a Bond has to be executed. He submits that a Bond had been executed effective from June 1998 and earlier assessments had been kept provisional and the matter had attained finality by OIA No.50/2001 dated 24.01.2001.

2. The learned JDR reiterated the Commissioner's view and the Assistant Commissioner's view taking a new view that the assessments were not provisional.

3. On a careful consideration, we are not agreeable with the order passed by the Commissioner (Appeals) in the impugned order confirming the OIO. The Commissioner (Appeals) had, after detailed consideration, held in OIA No. 50/2001 dated 24.01.2001, that the assessments were provisional and it was required to have been finalized. The Assistant Commissioner, in OIO, has not followed the order and by giving various reasons, has come out with a new plea that the assessments were final.

The Revenue ought to have appealed against the OIA No. 50/2001 dated 24.01.2001. Having not done so, the Commissioner (Appeals) OIA No.50/2001 dated 24.01.2001 has become final and, therefore, we hold that the assessments were provisional and the appellants' plea of consideration of their refund and the duty liability was required to have been finalized in terms of Mafatlal Industries judgment rendered by the Apex Court and followed by the Tribunal in the case of Star Paper Mills Ltd, and Needle Industries (I) Ltd (supra). The impugned orders are not legal and proper and they are set aside and the matter remanded to the original authority to finalise the assessments and not come out with a fresh finding that the assessments were not final. We direct the original authority to proceed on the basis of our finding that the assessments were not final but were provisional and that the claim of the assessee and the department should be taken up together while finalizing the assessments. The appellant shall be heard and the Principles of Natural Justice shall be observed in the de novo consideration. As the matter is old one, the de novo consideration shall be concluded within a period of four months from the date of receipt of this order.