

R.M. Bhat Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-01-2005

Reported in : (2005)(188)ELT493Tri(Mum.)bai

Judge : K Kumar

Appellant : R.M. Bhat

Respondent : Commissioner of Central Excise

Judgement :

1. Heard both sides. The Id. Counsel for the appellant inter alia submitted that the appellant was the Managing Director in M/s. Om Lamipack Pvt. Ltd. (for short-company). The said company was engaged in the manufacture of excisable goods. The charges were labelled against the said company for contravention of the provisions of the Central Excise Rules without preparing Central Excise invoice and without paying proper excise duty. The show cause notice dated 11-4-2000 was issued by the Commissioner to the said company for the contravention mentioned above. He submitted that it is pertinent to mention that no show cause notice was issued to the appellant at the time of issuance of the notice to the company as mentioned above. The said show cause notice was adjudicated upon by the Id. Commissioner on 27-12-2000 and the company has accepted the contravention and paid the duty and penalty as imposed on it. Thus, the matter stood duly extinguished.

However, without any fresh show cause of action, the said Commissioner has issued a show cause notice dated 11-4-2001 to the appellant on the same cause of action. The appellant has duly replied the said show cause notice inter alia submitting that since the Commissioner has already issued the show cause notice to the company and the same was duly adjudicated upon as mentioned above, there is no fresh show cause of action to issue the notice to the appellant on the same cause of action and the matter already stands extinguished. In total disregard of the submission of the appellant, the same Commissioner by virtue of the Order dated 28-9-2001 imposed a penalty of Rs. 5 Lakhs on the appellant.

The Id. Counsel, therefore, forcefully submitted that the impugned order is not sustainable for the following reasons : (i) that after passing the adjudication order against the company, the cause of action has extinguished and there was no fresh cause of action entitling the Commissioner to issue show cause notice to the appellant.

(ii) after adjudication has attained finality, the same cannot be reopened against the appellant in order to avoid the multiplicity of legal proceedings.

(iii) the Hon'ble Calcutta High Court in the case of Shamlal Sen Pvt. Ltd. v. Collector of Customs reported in 2000 (125) E.L.T. 405 (Calcutta) has inter alia held that the prosecutor himself cannot be the judge. In the instant case, since the same Commissioner has issued the notice to the company and has adjudicated upon the case and subsequently he issued a fresh show cause notice to the appellant and again imposed a penalty of Rs. 5 Lakhs on the appellant. The same is not legally sustainable as justice should not only be done but it should also appear to have been done is totally absent in the present case. The principle that no man shall be the judge of his own cause is fully violated. In a similar decision in the case of Mohammad Irfan Khan v. Superintendent, Central Excise, Moradabad reported in 2000 (123) E.L.T. 140 (Allahabad), it has inter alia been held that the prosecutor or detector of crime is interested in the result of judicial proceedings, therefore, he being the interested party should not sit as a judge. Relying on the decision in the case of Sulochana Amma , the Id. Counsel submitted that the Hon'ble Apex Court held as under : "The principle parts as a bar to try the same

issue once over. In other words, it aims to prevent multiplicity of proceedings and accords finality to an issue, which directly and subsequently has arisen in the former suit between the same parties or their privies, decided and became final so that parties are vexed twice over; vexatious litigation would be put to an end and the valuable time of the Court is saved. It is based on public policy as well as private justice. The principle would apply, therefore, to all judicial proceedings whether civil or otherwise. It equally applies to quasi-judicial proceedings of the tribunals other than the civil courts." 2. The Id. Counsel also relied on the decision in the case of Steel Authority of India Ltd. reported in 1988 (33) E.L.T. 363 (Tri.) and submitted that Tribunal has inter alia held that it is now fairly well settled on principles of constructive res judicata that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to, or essentially connected with, the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of matters of claim or defence. He submitted that since the Commissioner has failed to issue the show cause notice to the appellant, therefore, the principles of constructive res judicata applies and he cannot reopen the matter by fresh show cause notice.

3. He further submitted that since the Commissioner has failed to issue the show cause notice, he is not permitted for improvisation.

5. After hearing both sides and perusal of the case records and the case laws relied on by the Id. Counsel, I find that since the Commissioner has not issued the show cause notice to the appellant simultaneously, it shall be deemed that he has waived the show cause action against the appellant. Therefore, in view of the legal position as mentioned above, the impugned order is not legally sustainable. I, therefore, set aside the impugned order and allow the appeal filed by the appellant.