

Alfa Packaging Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-18-2005

Reported in : (2006)(194)ELT81Tri(Mum.)bai

Judge : A Wadhwa, S T S.S.

Appellant : Alfa Packaging

Respondent : Cce

Judgement :

1. Demand of duty of Rs.57,16,47,909/- has been confirmed against the appellants in respect of small pouches of shampoo cleared by them during the period April 1999 to March 2004 by raising in the show cause notice was well within time. In addition, an equal amount of penalty has also been imposed. The issue involved is as to whether such sachet of 3 to 9 ml are liable to assessed to duty in terms of Section 4 of Central Excise Act or 4A of the same. It is seen that said dispute was the subject matter of Writ Petition filed before the Hon'ble High Court of Bombay by the appellant, which was disposed of by the High Court vide its order dated 5.10.98 wherein the Hon'ble High Court after taking note of the Board's Circular no. 411/44/98-CX dated 31.7.98 directed the Revenue to assess the disputed item under Section 4 of the Act. Based upon the above decision, the Assistant Commissioner subsequently vide its order dated 7.12.98 held that shampoo of such sachets of below 10 ml packing removed are required to be assessed under Section 4 of the Act. Accordingly, he dropped the demand of duty of about Rs. 3 crores raised against the appellant. Subsequently, vide its letter dated 13.10.98,

the Assistant Commissioner also finalized the assessment under Section 4 of the Act.

2. Subsequently, however, show cause notice dated 1.12.2003 raising the demand of duty by invoking longer period of limitation was for the period April 1999 to October 2002 and another show cause notice was raised which was adjudicated by the Commissioner vide his impugned order in original. It is the contention of the appellants that the issue having been finally decided by the Hon'ble High Court of Bombay as also by the Assistant Commissioner, there is no justification for reopening the assessment again. Our attention has also been drawn to the observations made by the Commissioner in respect of the Order of the High Court wherein he has observed that the Hon'ble High Court merely on the basis of Board's Circular has decided that the said products were excluded from the purview of Section 4A of the Central Excise Act, 1944 (emphasis provided). We are of the view that the above observations made by the Commissioner are uncalled for and are boundary of contempt of court. The High Court having decided the above fact of dispute it was open to the Revenue to challenge the same before any higher appellate forum, if they were aggrieved with the same.

Commissioner is required to follow the High Court decision as judicial precedent without questioning the correctness of the same, especially when the dispute was settled between the parties in question. It may be observed here that the Commissioner was not sitting in appeal over the High Court's order and as such, was not within his rights to make comments upon the correctness of the same. Judicial discipline required him to follow the same without questioning the basis or reason adopted by the High Court for arriving at the directions issued by them.

3. In view of the above, we find that the appellant has a good prima case inasmuch as the issue stands directly covered by the Bombay High Court decision in the appellant's own case and allow the stay petition unconditionally. We would like to send a copy of this order to the Chief Commissioner for noting the conduct of the officer as regards his comment about the High Court decision and taking appropriate action, as he may deem fit.