Pradeep Kumar Sengupta Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-01-1988

Reported in : (1989)(41)ELT412TriDel

Appellant : Pradeep Kumar Sengupta

Respondent : Collector of C. Ex.

Judgement :

1. Notice dated 25-5-76 was issued to the appellants M/s. Mounted Poifits Suppliers Company (the person who has filed the present appeal Shri Pradeep Kumar Sengupta being the proprietor of the said firm) charging that they had manufactured and removed mounted points falling under Item 51(2)-CET without payment of duty and without observing other Central Excise formalities. A certain quantity of the mounted points had also been seized. On receipt of their reply and after adjudication the Deputy Collector under his order dated 26-12-78 confirmed demand for Rs. 98,698.45 in respect of the said goods removed during the period 29-5-71 to 23-12-75; confiscated the goods seized, giving an option for redemption on payment of fine and imposed a penalty of Rs. 500.00. The appeal against the said order was dismissed by the Appellate Collector under his order dated 20-3-1982. The revision petition preferred to the Central Government against the said order is, on transfer, the present deemed appeal before us.

2. Under the letter dated 29-1-1987 the appellants have indicated that they will not be appearing in person or through Counsel. None has appeared on their behalf today. We^have heard Shri K.C. Sachar for the department and have perused the

records.

3. Amongst other grounds the appellants have contended that principles of natural justice were violated in the proceedings before the Deputy Collector. This was firstly on the ground that copies of certain documents, though asked for, were not supplied and, secondly, on the ground that the cross-examination of the seizing officers and the chemical examiner, though asked for, was not permitted.

4. As regards documents not supplied the submission before the Appellate Collector was that a copy of the report of the chemical examiner was not furnished. The Appellate Collector had rejected this contention observing that the Counsel had certified in the original records that documents of which he sought inspection had been granted inspection and that the report of the chemical examiner is one of those documents. We find that the report of the chemical examiner had in fact been supplied to the appellants as Annexure 'B' of the show cause notice (page 72 of the paper-book filed before us). In the circumstances the complaint about omission to supply documents does not appear to be made out.

5. As regards the failure to comply with the request for making available certain witnesses for cross-examination, the Appellate Collector observed in his order that the reply to the show cause notice did not refer to any request for cross-examination of the seizing officer and since thus the appellants had not asked for this right at the adjudication stage, they cannot make a complaint thereof at the appellate stage. But as pointed out for the appellants, it is seen that in paragraph 16 of their reply to the show cause notice (page 60 of the paper-book), the appellants had specifically mentioned therein that they would exercise the right of cross-examination of the seizing officers and the chemical examiner at the time of hearing and the presence of these officers may be secured at that time. It does, not appear from the record of the personal hearing (page 46 of the paper-book) that the presence of these persons was secured and that the appellants did not exercise the right of cross-examination. As earlier mentioned, a complaint was made in this regard in the appeal to the Collector. The observations of the Collector about there having been no request for such cross-examination was obviously incorrect. In the circumstances we hold that the complaint of the

appellants that principles of natural justice had been violated in the adjudication, with reference to their right of cross-examination, is made out.

6. That would mean that on that ground itself the order of the lower authorities should be set aside and matter remitted to the adjudicating officer for de novo adjudication. Incidentally we take note of the fact that the main contention of the appellants had always been that no manufacture was involved since they purchased (either old or new) grinding wheels and after altering the shape thereof (when necessary) mounted them and supplied them to customers. The lower authorities have held that since such further operations have been carried out a new product had emerged and there was manufacture involving liability for payment of excise duty. While we express no opinion at present on the said matter, we will only indicate that the adjudicating authority will have to consider the issue from this aspect also that if the purchased material and the supplied material fall under the Tariff Entry the question whether there had been manufacture, calling for excise duty, will have to be considered with reference to that point also.

7. For the above reason we are not recording any finding or any of the issues. The order of the lower authorities is set aside and the matter is remitted to the adjudicating officer for adjudication afresh in the light of the observations earlier.