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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-17-2006

Judge : A Wadhwa, N T C.N.B.

Appellant : The Commissioner of Central

Respondent : H and R Johnson (India) Ltd.

Judgement :

1. Being aggrieved with the order passed by the Commissioner (Appeal), revenue has filed the present appeal.

2. As per facts on records, the respondents M/s. H & R Johnson (India) Ltd., are engaged in the manufacture of Ceramic Glazed Tiles and paving falling under Chapter heading No. 6906.10 of Central Excise Tariff Act, 1985. Two types of price lists were filed by the said assessee, one in Part-I (for the clearance of goods at factory gate price) and other in Part-IV (for clearance of their goods through branch depots). A dispute as regards the clearances and subsequent sale from the depots arose in respect of the value of the said goods. Accordingly, four show cause notices were issued to the assessee covering the period May 1989 to March 1990 raising demand of duty of Rs. 12,42,666.84. The said show cause notices were adjudicated vide order-in-original dated 28/07/90 confirming demand of duty against the assessee. The said order of the original adjudicating authority was appealed against before the Commissioner (Appeals), who set aside the same and ordered denovo adjudication with the following directions: (i) In case of regional sales depot, there was only a transfer of goods and there is no question

of sale as such, hence these regional sales depot can not be considered as different class of buyers. The factory gate prices would apply provided it is a genuine period.

(ii) The demand be work out on the basis of price available at the factory gate, if the price is genuine, and not on the basis of higher price wherever available, subject to the provisions of Section 11A of Central Excise Act, 1944, from the date of issue of show cause notice by the proper officer.

In terms of the above order, the matter was again taken up for adjudication and vide order-in-original dated 31/03/97, the demand of duty of Rs. 8,08,395.74 was confirmed and the balance was dropped. It was observed that in remand proceedings, adjudicating authority was bound by the directions of the higher authorities, who has remanded the matter and no new question of law can be raised by the assessee.

3. Against the above order the assessee again filed an appeal before the Commissioner (Appeals) which was disposed off by him vide his order dated 9/13-10-97 by observing as under: The adjudicating authority therefore given show cause notice numbers and amount given in show cause notice and differential duty worked out on the basis of factory gate price. The total duty involved in four show cause notice was Rs. 12,42,666.84 against which amount confirmed to Rs. 8,08,395.74. But there is no basis of details of amount confirmed in the impugned order of there is nothing on record which indicate that the respondents have been informed the basis of arriving he amount of duty confirmed.

In view of the above, it is a case of gross violation of principal to natural justice.

Therefore, the case is remanded back to lower authority for denovo adjudication informing the basis of arriving at the amount of demand confirmed and also giving the opportunity to them to defend their case.

4. The matter was once again taken up for adjudication and demand was again confirmed along with confirmation of interest. However, on appeal against the above order, the Commissioner (Appeals) set aside the same on merits and by

observing that the prices to different classes of buyer are accepted for the purpose of assessee's goods and there is nothing on record to show that the appellant's sale price through different depots were not commercial price and the depot also constituted a different classes of buyers.

5. The revenue's grievance against the above order is that once the matter was decided on merits by the first order dated 13/05/91 passed by the Commissioner (Appeals) and the matter was remanded only for calculation of duties in the light of the directions made by the Commissioner (Appeals), the present order setting aside the impugned order on merits was not justified. We note that the Commissioner (Appeals) vide his first order dated 13/05/91 directed the original authority for de novo consideration in the light of the directions contained therein. The said order of the Commissioner (Appeals) was never challenged by the assessee and, as such, had attained finality.

It was not open for the assessee to challenge the disputed issue on merits in de novo proceedings. If they were aggrieved, with the order of the Commissioner (Appeals), they should have filed an appeal their against before the Tribunal. As such, we fully agree with the Ld. DR that the Commissioner (Appeals) should not have allowed the appeal on merits in the present proceedings. Accordingly, we set aside the impugned order and restore the order of the original adjudicating authority by allowing the appeal of the revenue.

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