

Sunil and Co. Vs. Collector of Central Excise

Sunil and Co. Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/7198

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-16-1993

Reported in : (1995)(80)ELT653Tri(Mum.)bai

Appellant : Sunil and Co.

Respondent : Collector of Central Excise

Judgement :

1. Though this day only stay application was listed for hearing after hearing both the sides and perusing the order of the Collector, we find that the matter is required to be remanded and hence we have taken up the appeal itself for disposal on the short ground.

2. The appeal is against the Order-in-Original No. 56/93, dated 24-5-1993. For the limited purpose of dealing with the short ground, we are to extract the relevant portion of the order : "I confirm the amount of duty to be quantified by the Investigating officer as per my directions given above against M/s. Sunil & Co.

under Section 11A of the Central Excises & Salt Act, 1944.

As per the provisions of Section 11A of the Central Excise Act, wherein duty has not been levied or paid or has been short-levied or short-paid, a notice has to be served on the person chargeable to such duty and thereafter the officer, after considering the representation, shall determine the amount of duty due from the person, whereupon the noticee should pay up the amount so determined. The

provisions of this Section clearly indicate that the final determination of the duty amount has to be done by the person adjudicating the case after receiving the representation and cannot be left to the Investigating officer. Though in this case certain guidelines have been given for determining the duty amount, the statutory function of final determination of the duty amount has not been done. It was however open to the Collector, to allow certain deductions from the amount of duty already specified in the show cause notice but here the order indicates that the final quantification of duty would have to be determined, has been left in the hands of the Investigating officer and he seeks to confirm this in advance. In this view of the matter, on this short ground, we set aside the order, but remand the case back to the Collector for final determination of the duty payable by the appellant and pass orders in conformity with the provisions of law. The appeal is allowed by way of remand and hence the stay application was not separately considered.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com