Machine Crafters and Others Vs. Commissioner of Central Excise, Mumbai V and Others

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-09-2010

Judge : The Honourable Mr. B.S.V. Murthy, Member (Technical) &Amp; the Honourable Mr. Ashok Jindal, Member (Judicial)

Appeal No. : Appeal No. E/2761/03, E/2762/03, E/2828/03 - Mum E/CO/241/03 (Arising out of Order-in-Appeal

Appellant : Machine Crafters and Others

Respondent : Commissioner of Central Excise, Mumbai V and Others

Advocate for Pet/Ap. : Shri T.C. Nair, Consultant for Appellants Shri S.M. Vaidya, JDR for Respondents.

Judgement :

Per : Ashok Jindal

These are three appeals. One filed by the Revenue and the other two by the assessee against the same order. They are, therefore, being decided by a common order.

2. The Revenue has filed the appeal against the impugned order on the ground that the Commissioner (Appeals) has no power to remand the matter to the

original adjudicating authority.

3. Heard both sides and perused the records.

4. Vide the impugned order, the Commissioner (Appeals) while setting aside the order passed by the Asst. Commissioner has remanded the matter for re-adjudication by the original authority. The ground on which the impugned order is sought to be challenged is that the Commissioner (Appeals) has no power to remand a matter. We find that the order passed by the appellate authority is not maintainable. The Commissioner (Appeals) himself has to readjudicate the matter after hearing the parties. In the fact of the case the Revenue is justified in placing reliance in the decision in the case of Commissioner of Customs, Amritsar vs. Enkay (India) Rubber Co. Pvt. Ltd. reported in 2008 (224) ELT 393 (PandH). Attention is also drawn to the Judgment by the Apex Court in the case of MIL India Ltd. vs. CCE, Noida - 2007 (210) ELT. 188 (S.C.) wherein it was observed that the power of remand by Commissioner (Appeals) has been taken away by amending Section 35A with effect from 11.5.2001 under the Finance Bill, 2001.

5. Provisions of law clearly disclose that pursuant to that amendment brought out to Section 35A of the Central Excise Act, 1944 in the year 2001, the power of remand which was earlier available to the Commissioner (Appeals) has been specifically deleted from the statute book.

6. Considering the fact that the law is very clear, the Commissioner (Appeals) clearly erred in remitting the matter to the Asst. Commissioner. In this view of matter the impugned order is liable to be set aside and the matter to be remanded to the Commissioner (Appeals) to decide the appeal afresh after hearing both the sides in accordance with law as expeditious as possible.

7. Appeals are allowed by way of remand. Cross Objection is also disposed of in above terms.