

Kumar Industries Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-12-1996

Reported in : (1996)(87)ELT172TriDel

Appellant : Kumar Industries

Respondent : Collector of Central Excise

Judgement :

1. In all these appeals benefit of nil rate of duty on goods claimed to be agricultural implements has been denied to the appellants. Hence these appeals.

2. Appeal No. E/1895/87-B1 relates to question of classification and does not involve any duty demand as such.

3. Arguing for the appellants, the learned Consultant submits that demands pertain to period Nov., 1985 to May, 1986. All demands except those relating to the month of June, 1986 are time barred. He submits that no show cause notices were issued in all these cases and payment of amounts alleged to be short levied was demanded on RT 12 returns.

Since no proper show cause notices were issued, the orders are not sustainable.

4. The Learned DR submits that in these cases classification list had been approved on 3-7-1986 and it was in consequence of that approval that short levy was demanded on the RT 12. In such cases no show cause notices were needed.

5. We have heard both sides. We find that in the case of Appeal No.E/873-880/87-B no show cause notices have admittedly been issued and short payment is indicated only in RT 12 by way of Annexure attached to RT 12. The RT 12 indicates, under assessment memorandum, the total amount of short payment with remarks (for details see Annexure). The Hon'ble Apex Court in the case of Collector of Central Excise v. Kosan Metal Products Ltd., "3. The main question that was necessary to be decided in this case was whether proper notice had been issued. On the facts of the case, it does not appear that proper notice was issued. Merely on the ground of short entry in RT 12, Rule 11A would not be attracted. The same view appears to have been taken by the Kerala High Court in Good Shepherd Rubber Company's case (1978 E.L.T. 66). When in such circumstances, a demand is made under the Act for recovery then such demand must be under Section 11A of the Act."Union of India and Ors. v. Madhumilan Syntex Pvt.

Ltd. as reported in 1988 (35) E.L.T. 349 (SC) the Hon'ble Apex Court held that Section 11A of the Central Excises and Salt Act, 1944 clearly provides that show cause notice must be issued to the person against whom any demand on the ground of short-levy or non-levy of payment of excise duty is proposed to be made. The Hon'ble Apex Court observed that in Gokak Patel Vokkart Ltd. v. Collector of Central Excise, Belgaum - 1987 (28) E.L.T. 53 (SC), the Apex Court had held that provisions of Section 11A(1) and (2) of the Central Excises and Salt Act, 1944 make it clear that the statutory scheme is that in the situations covered by Sub-section (1), a notice to show cause has to be issued and Sub-section (2) requires that the cause shown by way of representation has to be considered by the prescribed authority and then only the amount has to be determined. Notice is a condition precedent to a demand under Sub-section (2).

7. Since admittedly in all these appeals i.e. E/873-880/87-B the payment of duty paid short was indicated only in RT12 and no show cause notices were issued, we are of the opinion that orders are not sustainable on this ground alone. In the result, without going into merits of the case, we set aside the impugned orders and allow the appeals.

8. E/1895/87-B1 - This is an appeal against the common Order-in-Appeal No. 184 & 185/86(C), dated 19-12-1986 of Collector (Appeals), Madras.

9. The Ld. Consultant submits that while Collector (Appeals) gave them relief in regard to two items i.e. spade and pick-axes, they had demanded relief not only on these items but number of other items and no finding has been given by Collector on these items. The relief claimed was that all these items were agricultural implements and were eligible to assessment to nil rate of duty under Notification No.64/86-C.E., dated 10-2-1986. In this connection, he draws our attention to memo of appeal filed before the Collector (Appeals) placed at page 15 of the paper book.

10. The Learned DR fairly concedes that since no finding has been given by the Collector on the claim made by the appellants, the matter would have to be remanded.

11. We have heard both sides. Going through the memo of appeal filed before the Collector (Appeals), we are satisfied that there has been an omission in not giving any findings on other items except spade and pick-axes. We therefore, are of the view that the matter would have to go back by way of remand. We accordingly set aside the impugned order and remand the matter to Commissioner for de novo consideration after affording appellants reasonable opportunity of being heard. Since the matter is being remanded, the Tribunal would appreciate if the decision in the matter is expedited.

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