(2015) 07 CESTAT CK 0013

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 525 Of 2010

CC, New Delhi APPELLANT

Vs

M/s Paras International RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Customs Act, 1962 — Section 28(1), 111(m), 112(a), 112(b), 114(A), 128A(3)
Central Excise Act, 1944 — Section 35A

Citation : (2015) 07 CESTAT CK 0013

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Suchitra Sharma

Final Decision : Allowed

Judgement

1. Revenue is in appeal against order-in-appeal dated 30.6.2010 which remanded the appeal filed by the respondent to the primary adjudicating

authority with the direction to ""revisit the issue to pass a fresh order taking into account the above facts and any other material evidence with

the department and after giving the appellants to present their case as early as possible in the light of 2006 (204) ELT 31 (Delhi) and 2001

(116) ELT 101 (Tri-Kolkata)"".

2. The primary adjudicating authority vide its order dated 15.12.2009 passed the order reproduced below:

(i) The impugned goods i.e. 74,480 MTs of RBD Palmolein, valued at Rs.26.78 lakhs, classifiable under CTH 1511,90.20 are liable for

confiscation under Section 111(m) of the CA, 1962. However, as the goods are not available and clearance was not made under Bond/Bank

Guarantee, they cannot be confiscated.

(ii) I confirm the demand of Rs.13,61,550/- (Rs. thirteen lakh sixty one thousand five hundred and fifty only) against M/s Paras

International under proviso to Section 28(1) of the CA, 1962, along with appropriate interest.

(iii) I impose a penalty of Rs.13,61,550/- (Rs. thirteen lakh sixty one thousand five hundred and fifty only) upon M/s Paras International

under Section 114(A) of the CA, 1962.

(iv) I do not impose any penalty under Section 112(a) of the CA, 1962 as penalty under Section 114(A) of the CA, 1962, has already been

imposed.

(v) I impose a penalty of Rs.1 lakhs (Rs. one lakhs only) on M/s JMD Oils (P) Ltd. under Section 112(b) of the CA, 12962.

(vi) I do not impose any penalty on Shri Manoj Jain as the penalty has already been imposed on his proprietorship concern, M/s Paras

International.

In its appeal, Revenue has contended that. Section 128A(3) of the Customs Act, 1962 was amended from 11.5.2001 vide which the expression ""or

may refer the case back to the adjudicating authority with such direction as he may think fit for a fresh adjudication or decision as the case

may be, after taking additional evidence, if necessaryâ?, appearing in that sub-section was deleted. As a result of the said amendment, the

Commissioner (Appeals) has been divested the power of remand and cited the judgement of Supreme Court in the case of MIL India Ltd. Vs. CCE-

2001 (210) ELT 188 (SC).

3. When the case was taken up, there was no representation on the part of the respondent.

4. We have considered contention of Revenue. We find that after the amendment of Section 128A(3) the Commissioner (Appeals) has indeed been

divested of the power of remand by deleting the expression ""or may refer the case back to the adjudicating authority with such direction as he

may think fit for a fresh adjudication or decision as the case may be, after taking additional evidence, if necessary"", from Section 128A(3).

The Supreme Court in the case of MIL India (supra) while interpreting a pari materia amendment to Section 35A of the Central Excise Act, 1944 has

observed that ""In fact, the power of remand by the Commissioner (Appeals) has been taken away by amending Section 35A with effect from

11.5.2001 under the Finance Bill, 2001. Under the Notes to clause 122 of the said Bill it is stated that clause 122 seeks to amend Section

35A so as to withdraw the power of the Commissioner (A) to remand matters back to the adjudicating authority for fresh consideration.

5. In these circumstances, we allow Revenue's appeal and remand the case to the Commissioner (Appeals) with the direction to decide the case on

merit.