(2015) 11 CESTAT CK 0012

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 552 Of 2010, Customs Cross No. 103 Of 2011

CCE, Indore APPELLANT

Vs

M/s Symblotech Pharmalab Ltd. RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Customs Act, 1962 — Section 129A(3)
Central Excise Act, 1944 — Section 35A(3)

Citation : (2015) 11 CESTAT CK 0012

Hon'ble Judges : R. K. Singh, Technical Member;Sulekha Beevi, C.S., J

Bench : Division Bench

Advocate : Amresh Jain, M. Saharan

Final Decision : Allowed

Judgement

1. Revenue is in appeal against order-in-appeal dated 23.7.2010 in terms of which Commissioner (Appeals) remanded the case back to primary

adjudicating authority. Revenue contends that with the amendment of Section 129A(3) of the Customs Act, 1962 with effect from 11.5.2001, the

Commissioner (Appeals) was divested the power to remand the case.

2. Ld. Advocate for the respondent states that the Supreme Court judgement in the case of MIL India Ltd. Vs. CCE - 2007 (210) ELT 188 (SC)was

taken note of by CESTAT in the case of CCE Meerut Vs. Honda Seil Power Porducts Ltd. - 2013 (287) ELT 353 (Tri.-Del.) wherein it was held that

Commissioner (Appeals) even after the amendment of Section 129A(3) ibid had the power to remand the case.

3. Ld. DR also drew our attention to the judgement of Punjab & Haryana High Court in the case ofC CE, Jalandhar Vs. B.C. Kataria - 2008 (221)

ELT 508 (P&H) and CC Vs. Enkay (India) Rubber Co. Pvt. Ltd. - 2008 (224) ELT

393 to support Revenue's case.

4. We have considered the contentions of both sides. We find that in the case of MIL India Ltd. (supra), the Supreme Court observed as under.

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 powers of the Commissioner (Appeals) to remand matters back to the adjudicating authority for fresh consideration.

The CESTAT in the case of Honda Seil Power Products Ltd. (supra) took note of the Supreme Court judgement in the case of MIL India Ltd.

(supra) but observed that the Supreme Court only made passing remarks on the scope of power of Commissioner (Appeal) and therefore the same do

not constitute binding precedent. While we may not necessarily agree with that observation of CESTAT, we do not need to record a formal difference

therewith in the light of the fact that Punjab & Haryana High Court in the casesof B.C. Kataria (supra) and Enkay (India) Rubber Co. Pvt. Ltd.

(supa) has also held that the Commissioner (Appeals) was divested of power to remand the case back to the adjudicating authority after deletion of

that power from Section 35A(3) of the Central Excise Act, 1944/Section 129A(3) of the Customs Act, 1962.

5. In the light of the foregoing, we agree with the contention of Revenue and allow the appeal by way of remand to Commissioner (Appeals) with the

direction to decide the case on merit after following the principles of natural justice.