(2011) 03 BOM CK 0038

In the Bombay High Court

Case No : Central Excise Appeal (L) No. 318 of 2006

Commissioner of C. Ex. APPELLANT

Vs

Kisanveer Ssk Ltd. RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Citation : (2011) 267 ELT 639

Hon'ble Judges : R.S. Dalvi, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : A.S. Rao and S.D. Bhosale, for the Appellant; Padmavati Patil, for the Respondent

Final Decision : Dismissed

Judgement

1. P.C.: Not on board. Taken up for admission by consent of both the parties.

2. The question raised in this appeal reads thus:

Whether the CESTAT was justified in reducing the duty liability from Rs. 11,77,971/- to Rs. 8,50,079/- on the ground that the liability cannot be increased in remand proceedings when the increased demand is already covered by the show cause notice?

3. In this case, by order-in-original dated 21-10-1997 the Assistant Commissioner of Central Excise, Satara confirmed the duty liability to the extent of Rs. 8,50,079/-, although the Assessee was called upon to show cause as to why the duty demand amounting to Rs. 11,77,971/- should not be recovered from the Assessee. Admittedly, the Revenue has not filed any appeal against the order-in-original in confirming the demand at Rs. 8,50,079/- instead at Rs. 11,77,971/-. The Assessee however filed an appeal against the order-in-original challenging the confirmation of duty demand amounting to Rs. 8,50,079/- and the Commissioner of Central Excise (Appeals) by his order dated 27-7-1998 remanded the matter back to the adjudicating authority to ascertain as to whether the Assessing Officer was justified in confirming the duty demand to the

extent of Rs. 8,50,079/-. On remand, the adjudicating authority passed fresh order on 26-2-2010 confirming the duty liability at Rs. 11,77,971/-. On an appeal filed by the Assessee, the Commissioner of Central Excise, Pune sustained the order of the adjudicating authority. On further appeal filed by the Assessee, the CESTAT by the impugned order dated 16-9-2010 held that the remand order was restricted to imposition of duty amounting to Rs. 8,50,079/- and, therefore, the assessing officer was not justified in confirming the duty demand in excess of Rs. 8,50,079/-.

4. As noted earlier, the Revenue had admittedly not filed any appeal against the order-in-original dated 21-10-1997. As the issue before Commissioner of Income Tax (Appeals) was relating to confirmation of duty amounting to Rs. 8,50,079/-, when the matter was remanded the adjudicating authority was required to pass fresh order only in relation to the demand amounting to Rs. 8,50,079/-. The argument of the Revenue that when the order-in-original dated 21-10-1997 was set aside and the matter was remanded back, the adjudicating officer was entitled to confirm the demand even in excess of Rs. 8,50,079/- cannot be accepted because, the remand was restricted to the confirmation of the duty liability amounting to Rs. 8,50,079/-. Since the Revenue had not challenged the decision of the adjudicating authority dated 21-10-1997 in dropping the demand in excess of Rs. 8,50,079/-, it is not open to the Revenue to adjudicate on that amount in the remand proceedings.

5. In this view of the matter, no fault can be found with the order of the CESTAT. The appeal is accordingly dismissed.

