(2011) 03 AP CK 0094

In the Andhra Pradesh High Court

Case No : Central Excise Appeal No. 70 of 2011

Commr. of C. EX., Visakhapatnam-II — APPELLANT

Vs

Kedia Vanaspathi Ltd. — RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:
Customs Act, 1962 — Section 130

Citation : (2012) 275 ELT 46 : (2011) 8 RCR(Civil) 781 : (2012) 28 STR 308 : (2013) 39 STT 95

Hon'ble Judges : V.V.S. Rao, J;B.N. Rao Nalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The Commissioner of Central Excise, Visakhapatnam-II Commissionerate, filed this appeal u/s 130 of Customs Act, 1962, feeling aggrieved by the order dated 27-12-2007 in Appeal Nos. C/699 & 700 of 2007 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench at Bengaluru.

2. The respondent is importer of edible oils through Kakinada Port for the period from 4-2-2003 to 19-3-2003. They filed bills of entry for a quantity of 2006.323 MT of edible oil as per Shore Ullage receipts. However admittedly the quantity of oil discharged from the vessels was 1996.136 MTs, as per Ship Ullage reports. Therefore the Assistant Commissioner of Customs, Kakinada-I (Customs) Division, took up the case for adjudication and directed payment of differential duty amount of Rs. 1,37,173/- on the differential quantity of 10.187 MTs of edible oil. This order dated 31-3-2007 was appealed before the Commissioner of Customs and Central Excise (Appeals). Relying on the circular of Central Board of Excise and Customs (C.B.E. & C.) being No. 96 of 2002, dated 27-12-2002, Commissioner of Appeals set aside adjudication order dated 27-12-2007.

3. There is no dispute that C.B.E. & C. issued circular dated 27-12-2002. As per the circular, in case of bulk liquid cargo imports, shore tank receipt quantity

should be taken as the basis for levy of customs duty. The Adjudicating Authority came to the conclusion that C.B.E.& C.''s circular comes into effect from 24-3-2003 on which date the Commissioner notified the same to the benefit of the parties within his jurisdiction. The Commissioner of Appeals as well as CESTAT found fault with the same and rightly came to the conclusion that the circular issued by the C.B.E. & C. shall come into effect from the date it was issued and not from the date when it is notified by way of public notice. The issue is squarely covered by M/s. Ranadey Micronutrients etc. Vs. Collector of Central Excise, , wherein it was held as under :

One should have thought that an officer of the Ministry of Finance would have greater respect for circulars such as these issued by the Board, which also operates under the aegis of the Ministry of Finance, for it is the Board which is, by statute, entrusted with the task of classifying excisable goods uniformly. The whole objective of such circulars is to adopt a uniform practice and to inform the trade as to how a particular product will be treated for the purposes of excise duty. It does not lie in the mouth of the Revenue to repudiate a circular issued by the Board on the basis that it is inconsistent with a statutory provision. Consistency and discipline are of far greater importance than the winning or losing of-court proceedings.

4. The legal position is not seriously disputed by the appellant. The appeal is therefore dismissed in limine.