

2013 (1) ECS (58) (Tri-Mum)

IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Commissioner of Central Excise, Mumbai-II

Vs.

Ahan Apparels Pvt. Ltd.

Appeal No. E/1266/2012

[Arising out of Order-in-Appeal No. US/331/M-II dated 11/05/2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II]

CCE, Mumbai-II

Appellant

Vs.

Ahan Apparels Pvt. Ltd.

Respondent

Appearance:

None for the appellant

Shri Ahibaran, Additional Commissioner (A.R.) for the respondent

CORAM:

Hon'ble Shri P.R. Chandrasekharan, Member (Technical)

Date of hearing: 05.09.2012

Date of decision:05.09.2012

ORDER NO: A/267/2012/SMB/C-IV

“The ‘Central Excise Officer’ referred to therein is the officer competent to assess and determine the duty liability. Under the Excise law it is the Superintendent of Central Excise who is the assessing officer and, therefore, the notice issued by the jurisdictional Assistant Commissioner, who is a superior authority, is perfectly valid

in law and, therefore, he is competent to determine and adjudicate the duty not levied or short – levied or erroneously refunded.” [Para 5.1]

Per : P.R. Chandrasekharan:

1. This appeal filed by the Revenue is directed against Order-in-Appeal no. US/331/M-II dated 11.05.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II.
2. The facts relevant in this case are as follows:
 - 2.1 The Assistant Commissioner of Central Excise, Powai Division, Mumbai – II passed an order against M/s Ahan Apparels Pvt. Ltd. confirming Central Excise duty demand of Rs. 6,61,550/- under Section 11 A (1) of the Central Excise Act, 1994 along with interest thereon under Section 11 AB and also imposed an equivalent penalty under Section 11A C of the said Act. On review, the jurisdictional Commissioner was the view that the order passed by the Assistant Commissioner is not legally correct inasmuch as the monetary limit for adjudication by the Assistant Commissioner is only up to Rs. 5 lakhs in terms of Board’s Circular No. 865/3/2008 – CX dated 19.02.2008 and, therefore, he filed an appeal before the lower appellate authority to set aside the order passed by the lower adjudicating authority on the ground of exceeding jurisdiction. The appellate authority accepting the plea of the Revenue, set aside the order passed by the Assistant Commissioner. Revenue is once again aggrieved by the order of the appellate authority on the ground that while setting aside the order, the lower appellate authority did not give any liberty to the competent authority to decide matter on merits.
3. The learned Additional Commissioner (AR) submits that the order passed by the lower appellate authority is wrong on the ground that the department has not been given liberty to adjudicate the matter afresh by the competent authority. Further, by setting aside the order of the original adjudicating authority the confirmation of the demand itself has been set aside, thereby putting into jeopardy the interests of the Revenue.
4. None appeared for the respondent nor any request has been made seeking any adjournment, despite notice.
5. I have carefully considered the submissions.

- 5.1 The demand has been confirmed by the Assistant Commissioner under the provisions of Section 11 A (1) of the Central Excise Act, 1994 and the said section empowers a 'Central Excise Officer' to issue notice in cases where Excise duty has not been levied or paid or short – levied or short – paid or erroneously refunded. The 'Central Excise Officer' referred to therein is the officer competent to assess and determine the duty liability. Under the Excise law it is the Superintendent of Central Excise who is the assessing officer and, therefore, the notice issued by the jurisdictional Assistant Commissioner, who is a superior authority, is perfectly valid in law and, therefore, he is competent to determine and adjudicate the duty not levied or short – levied or erroneously refunded. Power of adjudication prescribed by the Board vide a Circular dated 19.02.2008 is only an administrative order and it is meant for smooth and efficient running of the administration. Such circular cannot take away the power vested on a Central Excise officer under the provisions of the Central Excise Act. The very same issue was decided by a three member bench of the hon'ble apex Court in the case of Pahwa Chemicals Pvt. Ltd. vs. Commissioner of Central Excise, Delhi 2005 (181) ELT 339 (SC). In the said case the hon'ble apex Court held that the administrative directions of the Central Board of Excise and Customs allocating different works to various classes of officers cannot cut down jurisdiction vested in them by statute and may be followed by them at best as matter of propriety. Issuance of show cause notice or adjudication contrary to such directions could not be set aside for want jurisdiction especially as no prejudice is caused thereby to the assessee/notice. It was more so as the legislature has purposely replaced the word 'Collector' with 'Central Excise Officer' in Section 11 A of the Central Excise Act, 1994.
- 5.2 In view of the above position the Assistant Commissioner, who is a Central Excise officer was statutorily competent to decide the matter. Therefore, setting aside such an order by the lower appellate authority though on appeal filed by the Revenue, is clearly unsustainable and bad in law and, therefore, the order of the lower appellate authority has to be set aside.
- 5.3 The Revenue's plea for a direction to send back the matter for fresh adjudication by the competent authority is not really required in view of the decision of the hon'ble apex Court in the case of Pahwa Chemicals Pvt. Ltd. (supra). The order passed by the original adjudicating authority is statutorily correct especially when the said order has not been challenged by the respondent herein. Therefore, what is now required is to restore the order of the original adjudicating authority. Accordingly, while setting aside the

impugned order in restore the order passed by the original adjudicating authority side order No. 01/JSC/AC/2011-12 dated 28.05.2011.

6. The appeal is disposed of in the above terms.

(Dictated in Court)