CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

E/969/2009-DB

[Arising out of Order-in-Appeal No. 41/2009 dated 31/07/2009 passed by the Commissioner of Central Excise, (Appeals-II), Bangalore]

Dhiren Gandhi
Proprietor-M/s. Dee & Em Naturals & Fragrances,
New No. 19(Old No.12),
Jagdambal Street, T. Nagar,
Chennai-600017.

Appellant(s)

VERSUS

The Commissioner of Central Excise, BANGALORE-III Commissionerate
P.B.No.5400, Queen's Road,
Bangalore–560001,
Karnataka

Respondent(s)

Appearance:

Mr. Md. Rahim, Advocate,
Mr. K.S. Ravi Shankar, Advocate
No. 152, Race Course Road,
Bangalore – 560001,
Karnataka.

For the Appellant

Mr. P. Gopa Kumar,
Jt. Commissioner (AR)

For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21143/2019

Date of Hearing: 27/11/2019
Date of Decision: 27/11/2019

Per : P. ANJANI KUMAR

M/s. D & M Natural Fragrances had surrendered registration obtained for manufacture of excisable goods; on the basis of audit conducted on the unit, department opined that the company is bound to pay Central Excise duty applicable to the final products lying in stock and an amount equivalent to CENVAT credit, if any allot to them in respect of input lying in stock or in process or contained in final product lying in stock on the date of surrendering of registration. Demand of Rs.4,03,982/- (Rupees Four Lakhs Three Thousand Nine Hundred and Eighty Two Only) and 87,636/- (Rupees Eighty Seven Thousand Six Hundred and Thirty Six Only) along with interest was confirmed vide Orders in Original dated 26/2007 and 27/2007 both dated 18/10/2007. On an appeal filed by the appellants to waive of pre-deposits, Commissioners appeal directed to make a pre-deposit of Rs.1,25,000/- (Rupees One Lakhs Twenty Five Thousand Only) vide orders 7-8/2008 dated 22/01/2008. On noncompliance the appeals were rejected vide orders 106-107/08 dated 29/02/2008. The appellants preferred an appeal before CESTAT, who vide Final Order 917-918/2008 dated 25/07/2008 set aside the impugned orders and remanded the issue to be decided again by following principals of natural justice.

2. In *de novo* order no. 41/2009 dated 31/07/2009, Commissioner appeals has confirmed a demand. The appellants contention was that, the company was a proprietorship firm and as the proprietor Shri Prakash Gandhi, expired on 15/09/2003 the proceeding against the company cannot be continued against the new proprietor i.e., Shri Dhiren Gandhi, son of late Shri Prakash Gandhi. Shri Dhiren Gandhi preferred an appeal in this Tribunal. Tribunal vide Final Order No. 1542/2010 dated 23/12/2010 held that in terms of Section 11 of Central Excise Act, 1944, cannot be used to demand from the successor duty liabilities of the assessee prior to the date of the insertion of proviso to Section 11 i.e., on 10/09/2004. On an appeal filed by the Department Hon'ble High Court of Karnataka 2012(281) ELT 64 (KAR), upheld the Tribunals order. No further appeal has been filed by the department against the order of the High Court.

3. The appellants have filed two appeals, E/968/2009 and E/969/2009, against the OIA 41/2009 dated 31/07/2009. Tribunal in the above said decision considered the appeal E/968/2009 and the present appeal E/969/2009 remained to be decided. The same is listed today for hearing and decision. Ongoing through the CESTAT's order in Appeal No. E/968/2009, it is seen that the appeal was with respect to the duty on the goods lying in the factory and confiscated. Tribunal has discussed the applicability of Section 11 to the successor and while observing that the provisions of Section 11 of Central Excise Act, 1944 cannot be invoked to demand duty on the successor, CESTAT has set aside the impugned order. We find that the present appeal is also against the same impugned order. When the impugned order is already set aside by the Tribunal; no application for rectification of the mistake apparent on record has been filed by the Department and as the order of the Tribunal is not negated by any higher judicial forum, we find that the impugned order is *non est.* Moreover, the principal on which the appeal was made, i.e., the applicability of proviso to Section 11 to the successor, before 10/09/2004 was also decided in favour of the appellants and the same was upheld by the High Court. As the impugned order has already been set aside, the present appeal gets consequentially merged with the earlier order passed by the Tribunal. Hence, the present appeal is to be held to have been allowed earlier. We find that no intervention is required by this Bench.

4. Thus, we find that there is nothing left in the Appeal No. E/969/2009 to be decided and accordingly the same is disposed of.

(Operative portion of the Order was pronounced
in Open Court on **27/11/2019**)

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

Devi...