

Cce Vs. S.P.M. Engineering

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Apr-22-1997

Reported in : (1997)(72)LC433Tri(Bang.)alore

Judge : V Gulati, Vice-

Appellant : Cce

Respondent : S.P.M. Engineering

Judgement :

1. These reference applications arise out of the order of the Tribunal under which the Tribunal has set aside the order of the lower authority on the ground that there has been a denial of principles of natural justice on the part of the learned lower appellate authority as the learned lower authority has decided the issue without affording an opportunity of personal hearing to the appellants.

2. The learned Advocate for the respondents has pleaded that the very same order which is the subject matter of the appeal before the appellate Tribunal was taken as the subject matter of the writ petition filed by some of the respondents. Now the respondents were one of the writ petitioners among those whose appeals were decided by the learned lower authority by a common order. The Hon'ble High Court of Bangalore has ordered as under in the Writ Petition of 5 cases No. 22125/96, 22126/96, 23892/96, 23891/96.

2.1. In the present case, the petitioner has challenged the validity of the order dated 25.3.1996 which has been passed by the Commissioner of Customs and Central Excise (Appeals) under Section 35A of the Central Excises and Salt Act, 1944. Admittedly the said order has been passed without granting any opportunity of personal hearing to the petitioner.

Section 35A of the Act makes it mandatory on the part of the Collector (Appeals) to give an opportunity of being heard to the petitioner if the petitioner so desires. In that view of the matter Mr. Ashok Harnahally, learned Central Government Standing Counsel, has fairly conceded that the Collector (Appeals) was not vested with discretion to dispense with the requirement of personal hearing. Accordingly, the impugned appellate order is quashed with a direction to the Collector (Appeals) to dispose of the appeal filed by the petitioner after granting an opportunity of personal hearing.

2.2 He has pleaded that since the issue involved in the very same order which is the subject matter of the reference applications, stands decided by the Hon'ble High Court by holding that the impugned order was not proper after a concession had been made by the Central Government Standing Counsel that the Collector (Appeals) was not vested with the discretion to dispense with the personal hearing, the question of any reference, therefore, does not arise. The learned JDR for the Department fairly concedes this position.

3. We have considered the pleas made before us. We observe that the point raised before us relates to the discretion of the learned lower appellate authority to dispense with the personal hearing in respect of the appeals filed before him. The Hon'ble High Court of Karnataka has already taken a view in this regard and the

Central Government Standing Counsel has also admitted that the Collector (Appeals) was not vested with the discretion to dispense with requirement of personal hearing.

In this background, therefore, the question of law as urged in the context of the denial of principles of natural justice does not arise for reference. This question can be taken to have been already answered by the Hon'ble High Court. Therefore, referring the same question before the Hon'ble High Court does not arise.

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