Vivek Kumar JaIn and Another Vs. Commissioner of Customs (import), Chennai

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Mar-18-2014

Judge : P.K. Das, Judicial Member &Amp; Rakesh Kumar, Technical Member

Appeal No. : C/S/41665 & 41666 of 2013 & C/41889 & 41890 of 2013 (Arising Out of Order-in-Appeal No. 809 of 2013 dated 11.6.2013 & No. 1096 of 2013 dated 8.8.2013 passed by the Commissioner of Customs (Appeals), Chennai)

Appellant : Vivek Kumar JaIn and Another

Respondent : Commissioner of Customs (import), Chennai

Judgement :

P.K. Das, J.

1. A common issue is involved in both the appeals and hence they are taken up together for disposal. After hearing both the sides at length, we find that the appeals can be disposed of at the stage of hearing the stay applications. Accordingly, after disposing of the stay applications, the appeals are taken up for hearing.

2. After hearing both sides and on perusal of the records, we find that there is a demand of anti-dumping duty of Rs.47,36,512/- along with interest and penalty of Rs.one lakh on M/s. Olympic Enterprises and penalty of Rs.50,000/- on Shri Vivek

Kumar Jain, Manager of M/s. Olympic Enterprises. The learned counsel submits that in the appeal of M/s. Olympic Enterprises, the Commissioner (Appeals) by order dated 6.6.2013 directed them to make a predeposit of the entire amount of anti-dumping duty along with penalty without giving any opportunity of hearing. He further submits that they filed an application for modification of the stay order. It is submitted that the appeals were dismissed for non-compliance of the stay order without giving any opportunity of hearing.

3. On the other hand, the learned AR on behalf of Revenue submits that they had admitted during investigation regarding the liability of anti-dumping duty for the past periods. She also contended that the Commissioner (Appeals) had given an opportunity of hearing but they have not turned up.

4. After considering the submissions of both the sides and on perusal of the records, we find from the impugned order that personal hearing was granted on 4.2.2013 and the appellant through their counsel requested for adjournment of hearing. It is observed by the Commissioner (Appeals) that personal hearing was only for stay and it is not necessary to prolong the same and therefore the Commissioner (Appeals) directed them to deposit the entire amount of anti-dumping duty and penalty. It is seen that the appellant filed an application for modification of the stay order which was not considered. By the impugned orders, the Commissioner (Appeals) dismissed the appeals for non-compliance of the stay order. In our considered view, the Commissioner (Appeals) should have given another opportunity to the appellants to defend their case in the interest of justice. In view of that, we set aside the impugned orders and the matters are remanded to the Commissioner (Appeals) to decide afresh the stay petition. Needless to say that the appellants shall be given a reasonable opportunity of hearing before passing the order. The learned counsel is directed to appear before the Commissioner (Appeals) within a period of one month from the date of receipt of the order for hearing of the appeals. Both the appeals are allowed by way of remand. The stay applications are disposed of accordingly.