

**D. Gupta Vs. Collector of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-20-1998

**Reported in :** (1998)(103)ELT691TriDel

**Appellant :** D. Gupta

**Respondent :** Collector of Central Excise

**Judgement :**

1. Shri V. Sridharan, the Id. Advocate appearing for the Applicants, at the outset submits that the Applicants were not given an opportunity of presenting their case effectively. He submitted that some dates were given by the Id. Commissioner, but since the regular Counsel of the Applicants was undergoing surgery, he had made a request for adjournment of the case to a date some time in November, 1997 as he was likely to be fit by end of October, 1997. The Id. Counsel submitted that the Commissioner in the meantime fixed 21-10-1997 as the date of hearing. He submits that, no doubt, some representatives of the Company presented themselves before the Id. Commissioner, but they simultaneously submitted a letter dated 20-10-1997 stating that their regular Counsel was undergoing surgery and was not present, they were not in a position to present their case or undertake cross-examination of the witnesses.

2. The Id. Counsel submitted that there has been gross violation of the principles of natural justice which has led to miscarriage of justice and, therefore, prays that pre-deposit of duty and penalty may be waived and the case may be remanded to the lower authorities for giving the applicants an opportunity of being heard in

person to present their case.

3. The Id. Counsel undertakes to cooperate in the case so that the proceedings are completed within a period of two months. The Id.Counsel further submits that he would like to cross-examine not all the 21 persons whose statements were recorded, but only three witnesses viz. Shri Anil Sapra, Shri I. Mitra and Shri Rajveer Singh.

4. Shri Sanjeev Srivastava, the Id. JDR opposed the request and submits that the adjudicating authority had given 2 opportunities and that the Applicants have always been requesting that all the persons concerned, whose statements were recorded, should be present for cross-examination simultaneously. He submits that there were 21 persons whose statements were recorded and it was not possible to present all the 21 persons on the same date for cross-examination. He submitted that the Id.Commissioner considered this aspect and since the Applicants were repeating the same thing, it was considered by him as delaying tactics.

He submits that opportunities were given which the Applicants did not avail. He, therefore, submits that the applicants may be directed to deposit the entire amount of duty and penalty involved in the case.

5. Heard the submissions of both sides. We find that, no doubt, on paper, two days were fixed for hearing, but in effect, the hearings did not materialise inasmuch as the regular Counsel for the Applicants was undergoing surgery and on account of this personal problem of the regular Counsel for the Applicants, the Applicants could not present their case. We note that, looking to the facts of the case as also that the Applicants made every effort to expedite the matter and had only sought an adjournment of about 3 weeks for cross-examination of the witnesses and presenting the case, the request was genuine. We note that this request was reasonable on account of the facts and circumstances set out in the letter dated 20-10-1997. We, therefore, find that there was denial of natural justice. In the circumstances, we consider it a fit case for remand, dispensing with pre-deposit of duty and penalty.

6. We heard the Applicants as indicated above and in the circumstances brought out in the submissions of the Id. Counsel, we set aside the impugned order and remand the case for de novo adjudication. However, as the stakes involved are very high and also in view of the Id.Counsel's undertaking to cooperate in the matter and expedite the hearings as well as limiting cross-examination to only 3 witness as mentioned above, we direct the adjudicating Commissioner concerned to decide the matter before 31st May, 1998 after giving an effective hearing to the Applicant and pass orders in accordance with law.

7. In the result, the Stay applications are allowed. The Appeals are also allowed by way of remand.

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