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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-04-1999

Reported in : (2000)(117)ELT697TriDel

Appellant : A.V. Electronics

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants filed this application for waiver of the duty demand of Rs. 1,79,055/- and a penalty of Rs. 25,000/- on the Proprietor.

2. Learned Consultant appearing on behalf of the appellants submits that the order-in-original was passed by the adjudicating authority without giving the appellants reasonable opportunity for defending their case. He submits that the appellants made a request vide letter dated 6-4-1996 to supply copies of relied upon documents. He submits that the relied upon documents were not supplied to the appellants only the copies of the invoices were supplied which were not sufficient to prepare their defence as all the record of the appellants' firm were taken into possession at the time of the visit of Excise Officials. He produced the letter dated 22-7-1998 issued by the Supdt. of Central Excise showing that relied upon documents are not being traced out and will be returned as soon as the same were traced. He, therefore, submits that the adjudication order as well as the impugned order was passed in violation of the principles of natural justice and submits that the application be allowed.

3. .Learned JDR appearing on behalf of the Revenue submits that relied upon documents were supplied to Shri Vikas Sapra. All the documents handed-over to Shri Vikas Sapra who was representative and son of the Proprietor on 17-11-1997. He produced the photocopy showing to receipt of relying upon documents by Shri Vikas Sapra. He, therefore, submits that all the relied upon documents supplied to the appellants before passing the adjudication order. He, therefore, prays that the application should be dismissed.

5. The contention of the appellants is that record pertaining to the Unit was taken into possession by the Revenue authority at the time of the visit of Excise officers on 21-3-1996 and the Revenue has not supplied the relied upop documents and other documents to the appellants before passing the impugned order. Therefore, order was passed without complying with the principles of natural justice.

Learned JDR produced a letter dated 17-11-1997 showing the receipt of relying upon documents by Shri Vikas Sapra. The following documents were received by Shri Vikas Sapra :- 4. Record No. 3 as resumed by Annexure 'B' (total 80 pages i.e.

copies of invoices).

6. The Annexure 'B' to the Panchnama shows the seizure of the following records :- 6. File containing details of Banks Statement of Account and other Misc. papers.

7. The letter dated 17-11-1997 produced by the Revenue shows that all the record taken into possession vide Annexure 'B' have not been returned even on the request of the appellants to prepre the defence.

The letter dated 17-11-1997 shows only file containing invoices and file containing details of Bank Statements were given to Shri Sapra.

Therefore, in these circumstances prima facie I find the balance of convenience is in favour of the appellants. Therefore, the application is allowed. Deposit of total duty demand and penalty is waived for the hearing of the appeal and the recovery of the same is stayed during the pendency of the appeal.

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