

Ganesh Mathur Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-25-1999

Reported in : (2000)(115)ELT805TriDel

Appellant : Ganesh Mathur

Respondent : Commissioner of C. Ex.

Judgement :

1. The four stay applications have been taken up together as they arise out of the same order. The dispute in this case was that certain goods were clandestinely removed from the premises of M/s. Rajasthan Explosives & Chemicals and were received by another Company where Shri Ganesh Mathur was the Managing Director. The Department, therefore, confirmed the demand of duty on these goods alleged to be clandestinely removed and also imposed penalties on the firm and its employee as well as on Shri Ganesh Mathur. Stay applications are for waiver of pre-deposit of duty and penalties so imposed.

2. Shri J.S. Agarwal, Id. Counsel appears for M/s. Rajasthan Explosives & Chemicals and Shri K.K. Anand, Id. Counsel appears for Shri Ganesh Mathur. It was pointed out by the Id. Counsel for Shri Ganesh Mathur that neither they relied upon documents were supplied to Shri Ganesh Mathur nor was any personal hearing granted to him. He submits that there was total failure of natural justice. Shri Ganesh Mathur had no opportunity of defending his case. He submits therefore, that since Shri Ganesh Mathur had no opportunity whatsoever to defend his case pre-deposit of penalty imposed on him may be waived.

3. We find that the basic issue in these appeals is clandestine removal of goods by the manufacturer and receipt of these goods by another party. Since the principles of natural justice were violated specially in the case of Shri Ganesh Mathur and since this will require sending the case back, therefore, on the same issue in respect of Rajasthan Explosives & Chemicals and its employee a different view cannot be taken and if taken will lead to anomalies at a later date. In this view of the matter, we consider it a fit case of remand after waiving pre-deposit of duty and penalty in the four appeals. We therefore, remand the case to the adjudicating authority directing him to provide the appellants an opportunity of being heard in person and also direct him to supply copies of relied upon documents to Shri Ganesh Mathur.

The stay petitions are allowed and the appeals are also allowed by way of demand.

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