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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-01-2000

Reported in : (2000)(92)LC73Tri(Delhi)

Judge : S T G.R., S Kang

Appellant : Anilama Associates

Respondent : Cce

Judgement :

1. These six appeals arise out of the same order. Therefore, they were heard together and are being disposed of by this common order.

2. The facts of the case in brief are that five appellants were issued show cause notice asking them to explain as to why duty should not be demanded from them and why penalty should not be imposed. The scrutiny of R.T. 12 returns reveals that the appellants had paid smaller amount of duty on the goods whereas they should have paid a larger amount because large quantities of goods were inspected by the railway authorities and because after an inspection of the goods by the railway authorities, the chances of diversion were rare. The appellants requested for certain documents as most of the papers of the appellants were taken away by the authorities. The Commissioner, while adjudicating the case, confirmed the demand of Rs. 63,50,509/- and also imposed a penalty of Rs. 50 lakh on M/s. Anilama Associates and Rs. ten lakh each on Shri Jeewan Lal, Ms. Meenu Jagota, Shri Anil Kumar and Shri Rajesh Dubey. He also confiscated the

land and gave the appellants an option to redeem the same on payment of fine of Rs. three lakh.

Being aggrieved by these orders, the appellants have come up for appeal.

3. Arguing the case for appellants, Shri J.S. Agarwal, ld. Counsel submits that their case was built on certain documents. He submits that for preparing defence of the appellants, these documents were required.

He submits that a number of letters were written to the department for giving them copies of the documents relied upon. He submits that no copies of the documents were given to the appellants and, therefore, it was not possible for the appellants even to prepare the reply to the show cause notice. He submitted that no doubt an advocate for the appellants attended the personal hearing sometime, but at the time of personal hearing also, in spite of making a request for furnishing the copies of documents, nothing came out. He submits that by this denial of giving the copies of documents and other relevant papers, the appellants had not been able to prepare any defence and thus there has to be a failure of justice by violation of the principles of natural justice. He prays that the case may be remanded back to the authorities below with the direction that the appellants may be furnished copies of the requisite documents and given an opportunity of personal hearing.

In support of his contention, he cites the decision of the Tribunal in the case of Gautam Cable Inds. and Ors. v. CCE contained in Final Order No. A/14-19/2000 NB(DB) dated 3.1.2000.

4. Countering the arguments of the ld. counsel, Shri Mewa Singh, ld.S.D.R. submits that the entire case of the department is built on the documents. He submits that the department had no objection for inspection of the documents and in case the copies of the documents were not sent for one reason or the other, the authorities below had permitted the appellants the inspection of the documents and taking copies thereof. He submits that personal hearing was also granted as contended by the advocate of the appellants. He, therefore, submits that there was no failure of justice by violating the principles of natural justice.

5. We have heard rival submissions. We find that the case is document based. We also note that a number of documents were required as is evident from the Panchnama. The Panchama does not give the detailed description of the documents. But the documents were taken over at the time of search of the official premises of the appellants. We note that letters were written by the appellants to the authorities for supply of certain documents. From the records, we find that there is no indication that any reply to these letters was given. We also note that the appellants could not even submit the reply to the show cause notice. In these circumstances, we consider it a fit case for remand.

The appeals are, therefore, remanded to the Commissioner concerned with the direction that he will furnish copies of the documents sought for by the appellants or allow them to take copies after inspecting the documents and decide the issue in accordance with law after providing the appellants an opportunity of being heard, in person.

7. In respect of appeal filed by the Revenue i.e. appeal No.E/2165/99-NB, we find that the revenue has filed this appeal on the ground that statutory penalty under Section 11AC has not been imposed though duty demand has been confirmed. From the record, we find that demand is for the period from 1.2.1993 to 31.8.1996. The Tribunal has consistently been holding that provisions of charging interest shall not be applicable if the demand pertains to a period prior to the enactment of Section 11AC. So also is applicable to the provisions of Section 11AB. Since the period is before the enactment of Section 11AC and 11AB, the statutory penalty and charging of interest are not applicable to the facts of the present case. In the circumstances, the appeal of the revenue is rejected.

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