

Biddele Intermediates Pvt. Ltd. Vs. Commr. of Central Excise and

Biddele Intermediates Pvt. Ltd. Vs. Commr. of Central Excise and

SooperKanoon Citation : sooperkanoon.com/17971

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-30-2000

Reported in : (2000)(70)ECC39

Judge : S T Gowri, J S Murthy

Appellant : Biddele Intermediates Pvt. Ltd.

Respondent : Commr. of Central Excise and

Judgement :

2. The appellant is absent and unrepresented despite notice. We have read the relevant papers and heard the departmental representative.
3. The Commissioner (Appeals) dismissed the appeal before him for reason that the applicant did not deposit Rs. 28,000 out of the total duty demanded of Rs. 56,658 and penalty imposed of Rs. 5000.
4. We do not find it possible to agree that merely because the hearing was not granted this order is not maintainable. The Supreme Court in judgment in UOI v. Jesus Sales Corporation 1996(83) ELT 486 has held that a hearing in stay application is not mandatory. However that Court in the same judgment has said specifically that the concerned authority applies his mind in passing the order. It is not possible for us by reading the Commissioner's order on the stay application to come to this conclusion. The Commissioner's order consists of a printed format.

It is evident from the words in the format that it is used to dispose of the stay application filed in appeals under the Customs or Central Excise Act, the inapplicable words in each case being secondary. The printed format says that the Commissioner has considered the stay application "carefully" and submissions made on merits. It contains blank spaces in which the amount for deposit and the date within such deposit to be made have been typed in. It is entirely possible to say that these blank spaces may have been filled by anyone. There is not the slightest attempt at recording the arguments. The order is passed totally without application of mind except, perhaps, regarding the finding of the amount to be deposited. The order in appeal following consequent to that the order cannot be maintained.

5. Accordingly we allow the appeal and set aside the impugned order.

The Commissioner shall dispose of the stay application in accordance with law, ensuring that he grants a hearing, passes a reasoned order recording the submissions and thereafter dispose of the appeal also in accordance with law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com