

Process Pumps India P. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Jun-23-2000

Reported in : (2000)(93)LC256Tri(Bang.)alore

Judge : S Peeran

Appellant : Process Pumps India P. Ltd.

Respondent : Cce

Judgement :

1. As the issue lies in a short compass, the stay application is allowed by way of granting waiver and stay of the recovery and the appeal itself is taken up for disposal as per law. The impugned order was passed by the Commissioner (Appeals) rejecting the appeal under Section 35F of the Act on the ground of appellants not having fully pre-deposited the sum in terms of the interim order passed by him.

2. The learned Counsel Sri K.S. Ravishankar submits that there was no hearing granted in the matter. However, the appellants were directed to pre-deposit a sum of Rs. 1,25,615/- and they have pre-deposited only Rs. 35,000/- and filed a modification application giving very strong reasons for modifying the order impugned. The same was not considered and rejected. Hence, he submits that this case would also fall under Section 35A of the Act, where there was necessity to grant hearing even in cases where there is an application for modification of the order.

He further submits that the Hon'ble Madras High Court in the case of ITC Ltd. as reported in 2000 (1) ECL 97 have remanded all matters to the Commissioner (Appeals) on account of the appellants not having been given an opportunity of hearing. He submits that a similar order was also passed by the Tribunal on the same count in number of cases and therefore, he contends that the matter is required to be remanded to the Commissioner (Appeals).

3. Heard learned D.R. Sri M. Kunhi Kannan, who submits that the question of re-hearing on the modification application does not arise and the Commissioner was justified in rejecting the same. However, the Commissioner had considered the prayer before rejecting their appeal.

4. Perused the records. I notice that the Commissioner has not given hearing to the appellants at the time of passing interim order as well as the final order in terms of Section 35A of the Act. The application for modification of stay order is also required to be heard as it is a continuation of stay application and orders passed thereon. In terms of principles of natural justice, all applications filed for modification are required to be heard and if a case is made out for waiver on balance, the same is ought to be considered. Hence, there is a clear violation of principles of natural justice in this matter. The Tribunal and the Madras High Court have been remanding the matters to the Commissioners (Appeals) to grant hearing before disposed of the stay matters. Therefore, the impugned order is set aside and matter remanded to the Commissioner (Appeals) to hear the application afresh after granting an opportunity to the appellants and to pass a considered order thereon.

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