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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-25-2000

Reported in : (2000)(72)ECC506

Judge : P Chacko

Appellant : Krishna Alloys Ltd.

Respondent : Cce

Judgement :

1. Carefully examined the recors. Heard both sides. Having been convinced of the existence of a strong prima facie case in favour of the applicants I allow the stay application unconditionally and having regard to the facts and circumstances of the case, proceed to dispose of the appeal itself finally. The jurisdictional Assistant Commissioner had disallowed Modvat credit to the tune to Rs. 2,65,846.78, and had also imposed a penalty of Rs. 20,000 on the appellants for alleged wrong availment of Modvat credit. Against this order of adjudication, the appellants preferred appeal to the Commissioner (Appeals) and also filed an application for waiver of pre-deposit of the duty and penalty amounts and also for stay of recovery thereof. The said application was disposed of by the lower appellate authority after hearing the party as per stay order dated 21.1.2000. In the said stay order, Ld.

Commissioner (Appeals) recorded a prima facie finding that in respect of Modvat credit taken to the extent of Rs. 72,849.00 out of the aforesaid amount, the

appellants had a good case. He, however, held to the contrary in respect of the balance amount. Ld. Commissioner (Appeals) then directed the appellants to make pre-deposit of an amount of Rs. 2 lakhs within 15 days, falling which, it was warned, the appeal itself would be dismissed for default under Section 35F without further reference in the matter. The appellants on 11.2.2000 submitted a representation to Ld. Commissioner (Appeals) praying for reconsideration of the above order and for complete waiver of pre-deposit. On the ground that as per their balance sheet as on 31.3.1999 they had profit of only Rs. 1.48 lakhs and that the were constrained to make a pre-deposit of an amount of Rs. 2.5 lakhs in another case, which circumstances put them in financial hardships. The lower appellate authority, obviously, did not heed this representation and proceeded to dispose of the appeal without hearing the party. In the result, the impugned order was passed rejecting the appeal on the sole ground of non-compliance with the requirement of pre-deposit under Section 35F of the Central Excise Act.

2. Ld. Advocate Shri K.K. Anand for the appellants has reiterated the grounds of the appeal and has prayed for a remand of the matter after setting aside the impugned order passed by Commissioner (Appeals). Ld.

JDR Dr. Ravinder Babu has given his version of the facts and circumstances of the case in defence of the impugned order. He has rather insisted on rejecting the present stay application and directing the party to make pre-deposit of the entire amount of dispute.

3. I have carefully considered the rival submission in the light of the facts and circumstances of this case. Ld. Commissioner (Appeals) passed the aforesaid stay order on merits of the appellants' stay application after hearing the appellants. According to his prima facie finding, the appellants had a good case in respect of Modvat credit to the extent of Rs. 72,849 and had a bad case in respect of the balance amount of Rs. 1,92,897.00. Nevertheless, he insisted on pre-deposit of an amount of Rs. 2 lakhs. Apparently, there is an element of incompatibility between the direction for deposit of Rs. 2 lakhs and the prima facie finding reached by Ld. Commissioner (Appeals). This aspect, however, is not very crucial, in my view, for assessing the legality of the stay order.

The crucial aspect in my view, is that Ld. Commissioner (Appeals) did not consider the financial hardships of the party while issuing the direction for deposit of Rs. 2 lakhs, which he was duty bound to do Under Section 35F of the Act. In view of this position, the stay order suffers from non-application of mind. The order does not reveal a reasonable exercise of discretion by the quasi-judicial authority. That authority ought to have at least considered the subsequent representation made by the appellants on its merits and ought to have looked into the question whether the direction for pre-deposit of Rs. 2 lakhs required to be re-considered in the light of the submissions contained in the representation. What the lower appellate authority chose to do was to proceed to reject the appeal for non-compliance with pre-deposit and that too without affording any opportunity of hearing to the party. In such facts and circumstances, I find this case to be a fit one for remand to the lower appellate authority with appropriate directions.

4. I set aside both the stay order and impugned final order passed by Ld. Commissioner (Appeals) and allow the present appeal by way of remand, directing him to pass fresh speaking orders on the appellants' stay application after duly considering their submissions contained in the representation dated 11.2.2000 and after affording yet another opportunity of personal hearing to them in accordance with the principles of natural justice. Ltd. Commissioner (Appeals) shall then dispose of the appeal on its merits after affording a similar opportunity to the party, subject to the results of the stay application.

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