Kitti Steels Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Hyderabad

Decided On : Sep-04-2000

Reported in : (2001)(94)LC736Tri(Hyd.)erabad

Judge : S Peeran, A T V.K.

Appellant : Kitti Steels Ltd.

Respondent : Cce

Judgement :

1. This stay application & appeal arises from an ex parte order of dismissal under Section 35F of the CE Act by Commissioner (Appeals) Hyderabad.

2. The grievance of the appellants is that they were not given hearing while passing interim order in the stay petition No. 738/99(H-III) CE dated 17.8.1999 and they were directed to pre-deposit an amount of Rs. 4 lakhs out of an adjudicated amount of Rs. 7,24,983/-. They contend that they have a strong case on merits as well as on financial hardship in as much as they have filed an application before BIFR to declare them as a sick unit which is still pending. They contend that they had raised all the grounds on merits and financial hardship in their stay application. However, as no hearing was given to them there is violation of principles of natural justice.

3. Shri J. Sudheendra, Dy. Manager (Commercial) for the appellants appears and files papers in support of his contention and submits that the company is facing

severe financial hardship and that they are presently only doing job work and not in a position to pre-deposit the amount. He submits that if hearing is given by Commissioner, they would be able to explain their case on merits as well as on financial hardship and therefore he seeks for remand of the matter. He has filed large number of case laws wherein ex parte orders have been set aside and matter remanded for de novo.

5. On careful consideration of the submissions and on perusal of records, it is seen that order for pre-deposit has been passed without grant of hearing which has since been held to be violative of principles of natural justice by Madras High Court in the case of ITC and Ors. v. CCE as reported in 2000 (1) ECL 97. The Tribunal have also set aside the ex parte orders and have remanded the matter for de novo consideration. Therefore we, while granting waiver of pre-deposit and stay of recovery, take up the appeal and remand the matter to Commissioner (Appeals) with the direction that appellants shall be heard on the stay application and considered order be passed after observing principles of natural justice. Appeal allowed by remand to Commissioner (Appeals).