

Simplex Corporation Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-21-2000

Reported in : (2001)(128)ELT381TriDel

Appellant : Simplex Corporation

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants in Appeal No. E/2377/2000-D moved a Miscellaneous Application for recalling/modifying the order of stay, No. S/72/2000-D, dated 31-10-2000. In the appeal they challenged the imposition of duty of Rs. 9,07,825.67 and imposition of penalty of Rs. 80,000/-. In that appeal, the appellants prayed for staying the operation of the order imposing the above duty and penalty. Stay order stood posted to 31-10-2000. On that date inspite of the notice none appeared on behalf of the appellants to move stay application. So this Tribunal directed the appellants to make deposit the entire amount of duty and penalty within a period of six months from the date of receipt of copy of the order. The appeal was posted for today for reporting compliance. Today, the representative of the appellants' company while moving Miscellaneous Application submitted that the company was closed way back in 1995 and that the notice for posting the case on 31-10-2000 did not reach any of the office of the company and so they could not appear before this Tribunal on 31-10-2000. It was also submitted by him that the company is in the financial difficulty. To substantiate this case, he produced balance sheet for the year ending 31-3-1999 and submitted that the appellant not having means to make

any deposit.

3. On the facts and circumstances of this case, we are inclined to accept the appellants' contention that the notice of hearing of stay petition on 31-10-2000 did not reach them. So they could not appear before this Tribunal on that day. Consequently, we recall the Stay Order dated 31-10-2000.

4. We have heard the Representative of the appellants on financial difficulties of the firm. The balance sheet for the period ending 31st March, 1999 shows that the company is in the financial difficulty.

Sales for the year 1998-99 as per the balance sheet was only Rs. 24,000/- as against Rs. 5 lakhs in the previous year. The company has sustained a loss of Rs. 1,86,451/- in the year 1998-99. In such circumstances if the entire duty and penalty is to be deposited as a condition precedent for entertaining the appeal, we feel that undue financial hardship will be caused to them. Accordingly, we waive pre-deposit of amount for entertaining the appeal. Petition for stay is accordingly allowed and office will post the appeal on 25-1-2001 for final hearing. Since the Representative of the appellants, Shri Kailash Bidasaria appeared before us and he is informed of the date of posting, no notice need be sent to party regarding the posting of appeal for final hearing.

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