Ador Polycontainers Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-04-2001

Reported in : (2001)(130)ELT821Tri(Mum.)bai

Appellant : Ador Polycontainers Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. After careful examination of the records of the case and after hearing both sides, we are of the view that the appeal itself requires to be finally disposed of at this stage. Moreover, the appellants appear to have a prima facie case. Therefore, we allow the present application unconditionally and proceed to dispose of the appeal itself finally.

2. The jurisdictional Asstt. Commissioner had disallowed the Modvat credit of Basic Excise Duty of Rs. 12,20,921/- and Special Excise Duty of Rs. 61,046/- under Rule 57-I of Central Excise Rules and had also imposed penalty of Rs. 1,00,000/- on the appellants under Rule 173Q of the Rules. Against this order of the Asstt. Commissioner, the party preferred an appeal to the Commissioner of Central Excise (Appeals).

The party also submitted an application for waiver of pre-deposit of the duty and penalty amounts and for stay of recovery thereof, pending the appeal. This application was disposed of by the Commissioner (Appeals) after hearing the party, as per order dated 14-3-2000, whereby the appellants were directed to freeze Rs. 6,00,000/- in their RG 23A part II account with the jurisdictional officer. The said order was received by the appellants on 27-3-2000, but they did not comply with the same. Instead, the appellants filed an application dated 1-8-2000 for reconsideration of the above stay order on numerous grounds stated therein. In the said application, which was received by the lower Appellate Authority on 7-8-2000, the appellants had, inter alia, relied on a catena of decisions of the Tribunal as well as of the Supreme Court and various High Courts, in support of their submission that they had a strong prima facie case warranting complete waiver of pre-deposit. This application for reconsideration of the stay order was not considered on its merits by the ld. Commissioner (Appeals) who informed the party that no review of the stay order was possible since, according to that authority, it had become functus officio with the passing of the stay order. Subsequently, the party submitted another application, dated 26-8-2,000 for reconsideration of the Stay order, by citing judicial decisions upholding the power of the Commissioner (Appeals) to so reconsider the stay orders. This request of the party was also ignored by the ld. Commissioner (Appeals). The lower Appellate Authority, thereafter, passed the impugned order rejecting the party's appeal on the sole ground of non-compliance with the direction for freezing of inputs-credit to the extent of Rs. 6 lakhs. The ld.Commissioner (Appeals) passed the said order without looking into the merits of the case, nor affording any opportunity of personal hearing to the appellants. Hence the present appeal before us.

3. We have heard both sides. Ld. Advocate Shri M.H. Patil submits that the entire proceedings of the ld. Commissioner (Appeals) are vitiated by negation of natural justice, and, therefore, the matter requires to be remanded. Ld. SDR Smt. Reena Arya for the Revenue has not contested the fact that the impugned order was passed in violation of principles of natural justice- 4. We have carefully examined the matter and considered the submissions. We find that the stay order was passed by Shri N.Krishnamurthy, Commissioner (Appeals), having jurisdiction in the matter and he had passed that order after hearing the party. The repeated applications for reconsideration of the stay order were filed before Shri S.D. Majumder, Commissioner (Appeals), having jurisdiction in the matter. This very fact, in our view, warranted re-consideration of the stay application by Shri S.D. Majumder, inasmuch as the original stay order had not been passed by him. It was

incumbent on Shri Majumder to apply his independent mind to the submissions contained in the applications for reconsideration, and take a decision on merits.

This, unfortunately, was not done by the ld. Commissioner (Appeals). He took the view that he was functus officio. This view is liable to be rejected inasmuch as there is nothing on the Statute Book which rendered the Commissioner (Appeals) funct us officio with the passing of the stay order, during the pendency of the appeal before him. He could still consider the request for reconsideration of the stay application and take a decision thereon. This position is supported by the case law now placed before us by the ld. Counsel [Tribunal's decision in the case of Pelican Valves & Engg. Works v. Collector of Central Excise -1993 (67) E.L.T. 424 (Tri.)] which held that Collector (Appeals) could modify his own interlocutory order.

5. We further find that the final order was passed by the Commissioner (Appeals) without affording any personal hearing to the appellants and without going into the merits of the case. He passed the order on the sole ground of non-compliance with the stay order passed by his predecessor. The said order is, therefore, clearly violative of the principles of natural justice. We, therefore, hold the view that the matter must be sent back to the lower Appellate Authority for fresh decision in accordance with law as well as the principles of natural justice. We do accordingly, after setting aside the impugned order.

6. Ld. Commissioner (Appeals) shall consider the submissions of the appellants as contained in the aforesaid application for modification of the stay order, on merits, and pass a speaking order thereon, after affording a reasonable opportunity of personal hearing to the party.

The earlier stay order passed by the lower Appellate authority will stand modified in accordance with the decision which will be taken by the Id/Commissioner (Appeals). Thereafter, the Commissioner (Appeals) shall dispose of the appeal itself on its merits [after affording an opportunity of personal hearing to the appellants] subject to the final results of the stay application.