C. Base Computronics Vs. Cce, Bhopal

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-09-2001

Appellant : C. Base Computronics

Respondent : Cce, Bhopal

Judgement :

1. Upon careful examination of the records and upon hearing both sides I am inclined to dispose of the appeal itself in finally after allowing the stay application unconditionally.

2. The appellants claimed to be engaged in the trade of purchase amd sale of computer. The departmental officers, who raided their premises resumed certain invoices from the premises and on the basis of documents so resumed,framed a case of manufacture and clandestine removal of computers against the appellants and, accordingly, show-caused them. The party contested it. The dispute was adjudicated by the jurisdictional Dy. Commissioner of Central Excise who passed order dated 26.3.1999 confirming a demand of duty of Rs. 3,08,956/- against the appellants and imposing on them mandatory penalty under Section IIAC of the Central Excise Act and a further penalty of Rs.75,000/- under Rule 1730 of the Central Excise Rules. Aggrieved by this order of the Deputy Commissioner, M/s C. Base Computronics (appellants herein) preferred appeal to the Commissioner (Appeals) They also filed a stay application praying for waiver of pre-deposit of the duty and penalty amounts and for stay of recovery thereof, pending the appeal. Ld. Commissioner (Appeals), without giving any personal hearing to the applicants,

disposed of the stay application as per order 24.2.2000 waiving pre-deposit of the penalty amount but directing the applicants to pre-deposit the duty amount within a period of there weeks from the date of receipt of the order. Upon receipt of the said order, the applicants submitted a representation to the Commissioner (Appeals) on 6.3.2000, wherein they requested the lower appellate authority to grant complete waiver of pre-deposit on the ground of financial hardships and to dispose of the appeal on its merits after personal hearing. This representation was considered by Ld.

Commissioner (Appeals) who, thereupon reduced the amount for pre-deposit by 50%. According to the appellants, the revised order of the Commissioner (Appeals) was not received by them. They did not deposit any amount either. Later on, the Commissioner (Appeals) disposed of their appeal as per order dated 23.8.2000, without giving any opportunity of persoral hearing to them. As per the said order, he rejected the appeal on the sole ground of ron-compliance with Section 35F of the Cental Excise Act, without looking into the merits of the case. The appellants are now aggrieved by this order of the Commissioner (Appeals).

3. I have heard both sides. Ld. Advocate Sh. R.K. Choudhary submits that the stay order dated 24.2.2000 and the impugned final order were passed by Ld. Commissioner (Appeals) in violation of the principles of natural justice. The order of the Commissioner (Appeals) modifying his earlier stay order was not received by the appellants and the appeal was disposed of as above by him, regardless of the specific request made by the party in their representation that the appeal by disposed of on its merits after personal hearing. Counsel prays for setting aside the impugned order and remanding the matter to the lower appellate authority.

4. Ld. JDR Sh. A.K. Jain has opposed the above submissions of Ld.

Advocate. He submits that, as disclosed by the stay order dated 24.2.2000, Ld. Commissioner (Appeals) has duly corsidered the submissions of the party as contained in their stay application.

Further, the aspect of financial hardships stated by the party in their subsequent representation was also duly taken into account by Ld.

Commissioner (Appeals) and, accordingly, the amount for pre-deposit was reduced by 50% Therefore, according to Ld. JDR, it cannot be said that Ld. Commissioner (Appeals) did note apply his mind to the submissions made by the party in support of their stay application. In the interest of justice, the appellants should bye directed to deposit 50% of the duty amount for the purpose of regular hearing of the appeal before the lower appellate authority, submits Ld. JDR.5. I have carefully examined the rival submissions. I note that the stay order dated 24.2.2000 was passed by the Commissioner (Appeals) without granting any opportunity of personal hearing to t he party. The lower appellate authority appears to have drawn support from the Supreme Court's ruling in Jesus Sales Corporation (1996(83) ELT 486 (SC) for dispensing with personal hearing in stay application. This action of Ld. Commissioner (Appeals) is grossly mis-conceived inasmuch as the Supreme Court's ruling would apply only to a situation in which the appellate authority applies its mind to all the relevant facts and circumstances of the case and discloses reasons for granting or refusing stay. Judgement in Jesus Sales Corporation (supra) is not a blanket mandate for any appellate authority to dispense with personal hearing and pass any order as it likes. In the stay order under reference, Ld. Commissioner (Appeals) recorded that the party had failed to made out a prima facie cade of undue hardships. But no reason whatsoever was disclosed in support of such a finding. For these reasons, the stay order passed by the Commissioner (Appeals) is repugnant to the ruling of the supreme Court in Jesus Sales Corporation (supra). Therefore, it has to be held that the stay order dated 24.2.2000 is unsustainable in law. Further-more, the submissions of the party putforth in the representation submitted on 6.3.2000 were not duly examined by the Commissioner (Appeals). It was specifically requested in that representation that the appeal be heard and disposed on its merits. This request was ignored by the authority and the impugned order was passed. Again, the authority and the impugned order was passed. Again, the authority did not care to ensure that its revised order of stay was duly served on the party, before final disposal of the appeal. Undoubtedly these proceedings of Ld.

Commissioner (Appeals) are grossly vitiated by nonobservance of the principles of natural justice and the same require to be set aside.

6. In view of the above findings, I set aside the stay order dated 24.2.2000, the revised order dated 13.3.2000 and the final order dated 23.8.2000 passed by the Commissioner (Appeals) and allow the present appeal by way of remand. Ld. Commissioner (Appeals) shall pass fresh speaking order on the stay application of the appellants after duly examining all the submissions contained in the stay application as well as in the subsequent representation and after granting a reasonable opportunity of personal hearing to the party. He shall then deal with the appeal on its merits after affording a similar opportunity to the party and pas a speaking order therein, subject, of course, to the results of the stay application.