M/S. Wings Electronics Vs. Commissioner of Central Excise,

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SooperKanoon Citation : sooperkanoon.com/23340

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-25-2001

Appellant : M/S. Wings Electronics

Respondent : Commissioner of Central Excise,

Judgement :

1. The appellant filed this appeal against the order passed by the Commissioner (Appeals). The Commissioner (Appeals) dismissed the appeal filed by the appellant for non-compliance to the provisions of Section 35F of the Central Excise Rules,1944.

3.The contention of the appellant is that the adjudicating authority imposed an penalty of Rs.10,000/- and ordered the confiscation of the goods and gave option to the appellants to redeem the goods on payment of redemption fine as well as penalty. The contention of the appellant is that as per the provisions of Rule 35F of the Central Excise Rules, 1944, the Appellate authority can waive pre-deposit of duty and penalty only on the conditions as deemed fit. Therefore, the direction of the Commissioner (Appeals) for pre-deposit of redemption fine is beyond the scope of Section 35F of the Central Excise Rules,1944. It is upto the appellant to redeem the goods or not. If, appellant wants to redeem them, will pay the redemption fine and, if, they don't want to redeem the goods, he cannot be compelled to do so. Now the appellant deposited the whole of the penalty before filing this appeal. Section 35F of Central Excise Rules, 1944 provides that appeal can be filed on deposit of duty and penalty levied. In the present case there is no demand of duty and only penalty is imposed. As the appellant deposited the penalty amount therefore, the provisions of Section 35F of the Central Excise Rules are complied with. Hence the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) for deciding the appeal on merits. Appeal is disposed of by way of remand.