Agile Systems Vs. Commissioner of Central Excise,

Agile Systems Vs. Commissioner of Central Excise,

SooperKanoon Citation : sooperkanoon.com/25012

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-14-2001

Appellant : Agile Systems

Respondent : Commissioner of Central Excise,

Judgement :

1. When this stay application was called out, I find that the intimation for the hearing sent on the address given in the appeal memorandum had been returned by the postal department undelivered. The application was, therefore, taken up for disposal ex-parte. On perusal of their appeal memorandum, I find that the issue is capable of being determined. I, therefore, take up the appeal for disposal after hearing Shri Shaikh, Departmental Representative and after granting waiver of pre-deposit of duty and penalty as prayed for.

2. The Asstt. Commissioner denied modvat credit of Rs.46,125.77 on the ground that the supplier's invoice was not pre-authenticated. This was in the face of the assessee's contention that for the mistake of the supplier they should not be penalised. The Commissioner(Appeals) directed them to deposit a sum of Rs.23,500/- as a pre-condition to hearing of their appeal. After extending the date of compliance on two occasions, he dismissed the appeal under Sec.35F of the Central Excise Act, 1944. Hence, the present appeal.

3. In the appeal memorandum it is claimed that the appellant was a Small Scale Enterprises and could not afford to deposit the amount. It is claimed that they requested for hearing but the Commissioner had dismissed their appeal without

granting any hearing. It was claimed that Gujarat High Court in identical circumstances had found such action of the Commissioner(Appeals) as untenable [1999(34)RLT-231]. The point taken on merits is that for the mistake of the supplier, the appellants should not be penalised. Special reliance was placed on the Tribunal judgement in the case of Ramgarh Chini Mills vs. CCE, Kanpur (1998(103)ELT-65(T). In this judgement, the Tribunal held that this was a curable defect remediable by the supplier.

4. In the present case, the appellants have not stated whether they had made any attempt to make this defect cured by the supplier. Even then, I find that the case is strong on merits and the Collector(Appeals) need not have insisted on pre-deposit.

5. Appeal is allowed. The proceedings are remanded to the jurisdictional Commissioner(Appeals). He shall hear the assessee on merits without insisting on any pre-deposit and if necessary on granting permission to the assessee to get the defects cured.