Electronics Instrumentation and Vs. Commissioner of Central Excise,

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SooperKanoon Citation : sooperkanoon.com/25245

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-28-2001

Appellant : Electronics Instrumentation and

Respondent : Commissioner of Central Excise,

Judgement :

1. When this application was called out the applicant were not present inspite of notice. The issue being small the appeal was taken up for final disposal after hearing Shri B.B. Sarkar for the Revenue.

2. Modvat credit of 32,094/- was disallowed, resultant duty confirmed and penalty of Rs. 2000/- was imposed on the appellant on the ground that credit was taken on the basis of invoices issued by unregistered dealers. Against this order the assessee filed an appeal and application for waiver of pre-deposit. The Commissioner (Appeals) passed a stereo typed order directing pre-deposit of about 50% of the duty. The appellant protested saying that the order was passed without application of mind and pointing out the Gujarat High Court judgement which directed appellate authorities to hear the appellant before making any order on the stay application. The Commissioner (Appeals) went forth and dismissed their appal for failure to comply with the directions, once again, without inviting the appellant for a hearing.

3. This Tribunal has consistently held that in the circumstances narrated above the orders of the Commissioner (Appeals) do not survive.

Such orders are made in patent violation of the principle of natural justice. On this ground the appeal merit to be allowed.

4. The Central Board of Excise and Customs by way of an executive instructions permitted acceptance of invoices issued by non-registered dealers, provided they have subsequently got registered before 31/12/1994. It appears from the order of the Assistant Commissioner that the dealers' registration certificate was also produced before him. Unfortunately in the absence of a copy of the show cause notice I cannot make out as to the date on which the dealer got registration. I am unable to make out the dates of the invoices. However, in certain judgements the Tribunal did not hold the offence is of material [1999 (107) ELT 444; 1999 (107) ELT 489]. The Tribunal in the case of Richimen Silks Ltd. Vs. CCE, Hyderabad 2001 (127) ELT 795 which follows that Madras High Court judgement in the case of ITC Ltd. Vs. CCE 2001 (127) ELT 338. The Gujarat High Court in the case of DCW Ltd. 1998 (97) ELT 424 emphasised the need for the applicants to be heard before the dismissal of the stay application. The same view was held by the Karanataka High Court in its judgement in the case of the Packwell Associates Vs. Union of India 1998 (98) ELT 601.

5. The appeal is allowed and the proceeding are remitted back to the Commissioner (Appeals). He shall hear the appellants on merits without insisting on any pre-deposit and issue appropriate orders.