Power Switchgears Vs. Commissioner of Central Excise,

Power Switchgears Vs. Commissioner of Central Excise,

SooperKanoon Citation : sooperkanoon.com/25249

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-28-2001

Appellant : Power Switchgears

Respondent : Commissioner of Central Excise,

Judgement :

1. When the application was called out the applicant was not present inspite of notice. On perusal of the facts it appears that the appeal itself is being capable of disposal and it is disposed off after granting waiver of pre-deposit of duty of Rs. 3,314/- and penalty of Rs. 1,000/- as prayed for.

2. The duty was confirmed by the Assistant Commissioner on finding that modvat credit was taken on the strength of invoices issued by a dealer who was not registered. Against this decision the assessee filed an appeal as also an application for waiver of pre-deposit. The Commissioner (Appeals) passed a stereo typed order directing the assessee to pre-depot Rs. 1657/- in terms of Section 35F of the Central Excise Act, 1944. Hid order does not show that the assessee were invited for hearing. The assessee then filed an application citing a Gujarat High Court judgment in which it was held that the Commissioner (Appeals) was required to hear the appellant before passing the orders on the stay application and reconsideration was requested. The Commissioner (Appeals) dismissed the appeal under Section 35F for failure of the assessee to comply with his order on the stay application. Once again he did not bother to hear the appellants. Hence the appeal.

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 principles 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 notice I cannot make out as to the date of the invoices. However, in certain judgments the Tribunal did not hold the offence material[199 (107) ELT 444; 1999 (107) ELT 489].

5. This appeal is allowed. The proceedings are remitted back to the Commissioner (Appeals). He shall hear the appeals on merits without insisting on any pre-deposit keeping in mind the judgments cited above and similar other orders of the Tribunal.