Electronics Instrumentation and Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-03-2001

Reported in : (2001)(134)ELT75Tri(Mum.)bai

Appellant : Electronics Instrumentation and

Respondent : Cce

Judgement :
1. These applications relate to three appeals filed against a single order of the Commissioner (Appeals) under which he-had disposed off the appeals filed before him by M/s Electronic Instrumentation and Control, who are the present appellant before the Tribunal. On perusal of the facts it appears that the issues are capable of being disposed off at this stage itself and therefore the appeals themselves are taken up for disposal.

2. The appellants were advised telegraphically to appear today but they are not present. These appeals are therefore disposed off after hearing Shri B.B. Sarkar and granting the prayer for waiver of pre-deposit.

3. In the three orders challenged before the Commissioner (Appeals) duty amounting to Rs. 65,384/- was confirmed and penalties totally amounting to Rs. 5,270/- were imposed. Commissioner (Appeals) in disposing of the stay applications, directed pre-deposit of above 50% of the duties confirmed in these cases. The assessee informed the Commissioner that they had deposited the amount. The Commissioner (Appeals) observed that they had deposited but under

a different head of account. Since directions on the stay application had not been fulfilled he dismissed the appeals in terms of Section 35F of the Act.

In doing so he did not take cognisance of the letter written to him by the applicant on 12-6-2000 nor did he direct them to appear before him for personal hearing. The appeals are against this order.

4. In the appeal memorandum the appellants have given the summary of the proceedings leading to the disposal of their appeals by the Commissioner (Appeals). While their appeals were pending before the Commissioner (Appeals) the assessee decided to take advantage of the Kar Vivad Samadhan Scheme, 1998. Requisite declarations were filed by them. The Commissioner acknowledged the declarations and passed orders under the provisions of the said Rules determining the sum payable in each case. These orders were made on 15-2-1999. On 19-2-1999, however, the Commissioner withdrew the certificate. The reason for the withdrawal was that the assessee had filed an appeal before the Commissioner (Appeals) subsequent to the period of three months. On that ground he held that the appeal was not validly filed and therefore the original orders had obtained finality. He observed that on 16-2-1999 "there was no arrears pending in dispute". The appellant wrote to him saying that the last date of filing of the appeal fell on a holiday and the appeals were filed on the next available working day and thus appeals could not be held to be hit by limitation. The assessee went ahead and deposited the determined amount also. The dispute seems to be pending at the time of filing of the appeal.

5. Pritna facie, whether the appeal was filed within the time is to be determined by the appellate authority namely, the Commissioner (Appeals), and not by the executive Commissioner. Even if the appeal is filed beyond time but within the period permitted by law as condonable the appeal can be said to be pending. The very fact that the Commissioner (Appeals) considered the stay applications would show that he did not hold the appeals to be barred by limitation. However, the Tribunal is not the appellate authority in case of dispute arising out of KVSS nor is that order of the jurisdictional Commissioner under challenge before the Tribunal.

6. All the sums directed by the Commissioner (Appeals), to be paid in terms of his stay order had already been paid by the assessee although not under the same heading. Since the Revenue was secured the Commissioner (Appeals) need not have dismissed the appeals before him.

In fact he need not have prescribed the sum to be deposited at all. I also observe that in doing so, at neither stage he chose to hear the appellants. This Tribunal has consistently held that in such circumstances the principles of natural justice are proved to have been violated and the orders therefore become unsustainable.

7. On the grounds of denial of natural justice alone the appeals are allowed. The proceedings are remitted back to the jurisdictional Commissioner (Appeals). He shall hear the appellants on merits without insisting on any pre-deposit and issue appropriate orders.