B.H.E.L. vs. C.C.E.

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SooperKanoon Citation : sooperkanoon.com/27197

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-10-2002

Reported in : (2002)(80)ECC314

Judge : S Kang, a T V.K.

Appellant : B.H.E.L.

Respondent : C.C.E.

Judgement :

1. When the case was called, none appeared on behalf of the applicants in spite of notice. Therefore, the appeal is being taken up in absence of the applicants.

2. On the last date of hearing, the appellants produced necessary clearance from the Committee on Dispute to pursue the appeal.

4. the applicants filed this application for waiver of duty and penalty.

5. Show cause notices were issued to the appellants for demanding duty on the parts of electric generators. Before the adjudicating authority, the contention of the appellants was that they were clearing the generators. The adjudicating authority confirmed the demand and imposed penalty. The appellants filed an appeal before the Commissioner (Appeals) along with an application for waiver of pre-deposit of duty and penalty. The application for waiver of duty and penalty was decided by the Commissioner (Appeals) without affording an opportunity of personal hearing to the applicants. On receipt of the order, passed by the Commissioner (Appeals),

the applicants filed a modification application and in this application they pleaded for personal hearing and the Commissioner (Appeals), without deciding this application, dismissed the appeal filed by the appellants for non-compliance to the provisions of Section 35F of the Central Excise Act. The contention of the applicants is that the impugned order is passed in violation to the principles of natural justice. The applicants also relied upon the earlier decision of the Tribunal in their own case i.e. C.C.E. v.B.H.E.L. 2001 (76) ECC 373 (T) (Final Order No. 271-272/2001-B dated 10.5.2001) whereby the matter had been remanded to the adjudicating authority in a similar situation. In view of the fact that the impugned order is passed in violation to the principle of natural justice and in view of the earlier decision of the Tribunal, the pre-deposit of duty and penalty is waived for hearing of the appeal and the appeal is being taken up for disposal as the impugned order is passed in violation to the principles of natural justice and in similar situation the matter had been remanded, the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to decide afresh after affording an opportunity of personal hearing to the appellants. The appeal is disposed of by way of remand.