Nova Steels (India) Ltd. Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/27355

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-25-2002

Reported in : (2002)(80)ECC544

Judge : K Usha, N T C.N.B.

Appellant : Nova Steels (India) Ltd.

Respondent : Cce

Judgement :

1. When these applications for dispensing with pre-deposit came up for hearing, it was agreed by both sides that the appeal itself can be disposed of.

2. Appeal No. E/2100/2001-A is directed against an order passed by the Commissioner (Appeals) dated 9.7.2001 rejecting the application for waiver of pre-deposit filed by the appellant herein before the Commissioner (Appeals). Appeal No. 2525/2001-A is against the order passed by the Commissioner (Appeals) dismissing the appeal itself for non-compliance with the direction to make pre-deposit as mentioned earlier.

3. It is contended on behalf of the appellant that before the application for waiver of pre-deposit came up for hearing before the Commissioner (Appeals) on 21.6.2001 a letter had been submitted to the effect that due to sudden demise of a very close relative of the Counsel appearing on behalf of the applicant the case is to be adjourned to another date. The Ld. Counsel, points out that there is

endorsement by the Secretary to Commissioner (Appeals) about the receipt of above letter on 20.6.2001. Without taking into consideration the above request the application was disposed of by the Commissioner (Appeals) directing deposit of amount of Rs. 40,50,000 towards dues, payable within 30 days on receipt of the Order. While the appeal filed by the applicant from the above order before this Tribunal was pending, on 5.10.2001, the appeal itself was dismissed by the Commissioner (Appeal) for non-compliance with the order directing pre-deposit.

4. The Ld. Counsel further contends that the applicants' Industry had been closed down on 30.11.96 as per direction issued by the Supreme Court of India as the appellants' industry was identified as (H) Hazardous Category of Industries. The factory had been subsequently shifted from Shahadra to Bilaspur in Madhya Pradesh but it could not start functioning due to financial difficulties.

5. It is also pointed out that applicants' Industry has been registered with BIFR and the matter is pending consideration. The applicant is not in a fit financial situation so as to make any pre-deposit. If pre-deposit is insisted it will defeat its right of appeal.

6. After hearing both sides, we are satisfied that it is a fit case for sending back the matter with a direction to the Commissioner (Appeals) to hear the appeal on merits without insisting on pre-deposit. The Ld.

Departmental Representative raised objection regarding the maintainability of appeal No. E/2100/2001-Aarising out of an order directing pre-deposit. He submits that such an appeal is not maintainable. Since the above order has now marged in the final order passed by the Commissioner (Appeals), which is also under challenge before us in appeal E/2525/2001-A, we are not going into merits of this objection. We make it clear that this order will not be taken as a precedence regarding maintainability of an appeal from an interlocutory order directing pre-deposit.

7. We, therefore, set aside the orders challenged in these two appeals and remand the matter to the Commissioner (Appeals) for considering the appeals on merits without insisting on pre-deposit. The appeals, therefore, stand allowed by

way of remand.