

A. Infrastructure Limited Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-27-2002

Reported in : (2002)(144)ELT103TriDel

Judge : B T K.K.

Appellant : A. Infrastructure Limited

Respondent : Commissioner of Central Excise,

Judgement :

1. The Tribunal vide its order dated 9-11-2001 observed in this matter that the amount of duty and penalty had not been deposited by the appellants for the purpose of Section 35F of the Central Excise Act, 1944; that there was no proof of deposit of duty and penalty, nor the appellants had filed any application for dispensing with the requirement of pre-deposit. The appeal was therefore dismissed for non-compliance of the provisions of Section 35F. The Tribunal, however, gave the appellants a liberty to get the appeal revived on due compliance with the requirements of Section 35F.2. The present ROA petition is filed by Shri P.S. Chaudhary, Consultant of the appellants. In this petition, it is stated that the department had detained the goods to the extent of Rs. 83,950/- (Modvat credit and penalty) by the order dated 4-7-96 passed under Rule 230 of the Central Excise Rules, 1944. It is contended that since the goods equivalent to the duty and penalty continued to be detained by the department, the provisions of Section 35F ought to be treated as complied with. It is, therefore, requested that the appeal may be revived and listed for regular hearing.

3. This petition was listed for hearing on 25-2-2002 but the same stood adjourned for today at the request of Shri K.K. Anand, Advocate for the appellants. Today, when the matter is called, the appellants are not represented. Shri K.K. Anand, Advocate has however, sent a letter of even date pleading that he is unwell and the hearing may be adjourned to any other date. Since the matter lies in a small premise. I am not inclined to grant any adjournment. This ROA petition cannot be admitted for more than one reasons. Firstly, this petition is filed by one Shri P.S. Chaudhary, Consultant and not by the appellants and such petitions are not competent in law. Secondly, the petitioners were specifically directed vide order dated 9-11-2001, either to file a petition under Section 35F or to pay duty and penalty imposed on them to revive their appeal. The petitioners have not complied with any of these. The detention of the goods by the department is no substitute for the mandatory provisions of pre-deposit of duty and penalty under Section 35F. The ROA petition is, therefore not maintainable and the same is accordingly dismissed.

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