

Primo Pick N Pack Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-23-2002

Reported in : (2002)(84)ECC806

Judge : P Chacko

Appellant : Primo Pick N Pack Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. On examining the records and hearing both sides, I find that the appeal itself can be disposed of finally at this stage. Heard both sides.

2. The Adjudicating Authority has disallowed Modvat credit of Rs. 5,73,142/- to the assessee and imposed on them a penalty of Rs. 50,000/-. Aggrieved by the decision of that authority, the assessee has preferred appeal to the Commissioner (Appeals). In that appeal, the appellants also filed an application for pre-deposit and stay of recovery in respect of the duty and penalty amounts under Section 35F of the Central Excise Act. The learned Commissioner (Appeals), after hearing the appellants, passed interim stay order dated 18-12-2001 directing them to deposit 60% of the adjudged dues within three weeks.

Upon receipt of the stay order, the party filed an application with the Commissioner (Appeals) on 9-1-2002 praying for modification of the order. Later on, the Commissioner (Appeals) passed order-in-appeal No.288/CE/BPL/99 dated 22-3-

2002 whereby the assessee's appeal was rejected for non-compliance with the provisions of Section 35F of the Act. Hence the present appeal of the assessee.

3. Heard both the sides. The learned Counsel for the appellants reiterates the grounds of appeal and submits that the impugned order was passed in violation of the principles of natural justice inasmuch as, no opportunity of being heard was granted by the Commissioner (Appeals) before passing that order. The learned Counsel further points out that no hearing was held on the modification application either and no speaking order was issued thereon. The learned Counsel prays for a remand of the matter.

4. The learned JDR admits that no opportunity of being heard was given to the assessee before the impugned order was passed.

5. Having carefully examined the submissions, I find that there is violation of principles of natural justice in this case. It was after hearing the party and examining the submissions contained in their stay application that the Commissioner (Appeals) passed the interim stay order. He directed the party to pre-deposit 60% of the adjudged dues under Section 35F. This Tribunal will not normally interfere in such exercise of discretion by the lower Appellate Authority. It is, however, noted that in the subsequent application filed by the assessee on 9-1-2002 praying for modification of the interim stay order, they had specifically asked, inter alia, for a personal hearing in the appeal but that prayer was ignored by the Commissioner (Appeals) who, without notice to the appellants, rejected their appeal on the sole ground of non-compliance of Section 35F. It is further noted that, with reference to the modification application, the impugned order does not contain any reasoned decision apart from an averment, "I find that there is no scope for modification of ISO." The learned Commissioner (Appeals) ought to have disposed of the modification application on its merits by way of a speaking order. The appellants have made out a case for remand. Therefore, I set aside the impugned order and allow the present appeal by way of remand. The learned Commissioner shall consider the modification application dated 9-1-2002 on its merits and pass a speaking order thereon after hearing the applicants. Subject to the results of the modification application, the Commissioner (Appeals) shall

consider the assessee's appeal on its merits and pass a speaking order thereon in accordance with law and the principles of natural justice. In view of this order, the interim stay order of the Commissioner (Appeals) will stand stayed till the modification application is finally disposed of.

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