Ashok Karnavat Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-01-2003

Reported in : (2003)(161)ELT821TriDel

Judge : S Kang, a T V.K.

Appellant : Ashok Karnavat

Respondent : Commissioner of Central Excise

Judgement :
3. In this case, the appellant filed the appeal against the order passed by the Commissioner of Central Excise whereby penalty of Rs. 1,00,000/- was imposed under Rule 209A of the Central Excise Rules.

Tribunal vide stay order dated 24-1-2002 directed the applicant to deposit a sum of Rs. 50,000/- for hearing of the appeal. Appellant failed to comply with the stay order. Thereafter, the appeal was dismissed for non-compliance to the stay order.

4. The contention of the applicant is that penalty under Rule 209A was imposed on the appellant as he was Director of Tamilnadu Tobacco Co.

Ltd. and he facilitated Tamilnadu Tobacco Company to produce unaccounted cigarettes which were cleared without payment of duty. On appeal filed by the Tamilnadu Tobacco Company Ltd., Tribunal vide final order dated 12-12-2002 without asking for any pre-deposit, remanded the matter to the Adjudicating Authority on the ground that the order was passed in violation of the principles of natural justice. The request of the applicant is that as the issue regarding demand of duty from Tamilnadu Tobacco Company Limited is remanded to the Adjudicating Authority without asking for any pre-deposit, the issue in respect of imposition of penalty on the present applicant is also required remand.

5. We find that Tribunal vide final Order Nos. A/1153 to 1158/02-NB(D), dated 12-12-2002 in appeal filed by Tamilnadu Tobacco Company Limited at the stay stage remanded the matter to the Adjudicating Authority for deciding afresh. The penalty on the applicant is imposed only on the basis of demand in respect of Tamilnadu Tobacco Company Limited.

Therefore, in the interest of justice, final order is recalled and stay order is modified and pre-deposit of penalty is waived for hearing of the appeal.

6. In view of the final order dated 12-12-2002 passed by the Tribunal in the case of Tamilnadu Tobacco Company Limited, the matter is remanded to the Adjudicating Authority for deciding afresh after affording an opportunity of hearing to the appellant.