D'Mello and Co. Vs. Commissioner Of Central Excise

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SooperKanoon Citation : sooperkanoon.com/30651

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-22-2003

Reported in : (2003)(162)ELT1043Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : D'Mello and Co.

Respondent : Commissioner Of Central Excise

Judgement :

2. The appeal is against the order of the Commissioner (Appeals) on the classification of fibre glass sleevings that the appellant manufactured. The Commissioner has found that the appellant did not appear before him the date on which the hearing was fixed and he dismissed the appeal (except for releasing the penalty) because the appellant has not controverted the findings in the stay order.

3. It does not need any great explanation or authority to say that the stay order of the Commissioner (Appeals) did not finally determine any issue. The opinion recorded in it has necessarily to be prima facie. If it was not so, any authority that passes stay order would be restrained from hearing the matter finally because it has already expressed a final opinion on the issue. The Commissioner (Appeals) therefore fallen into error by dismissing the appeal only on the ground that his finding in his stay order has not been challenged. His order does not deal with the merits at all. It is therefore totally a non speaking order and has to be set aside.

4. The appeal is accordingly allowed and the impugned order set aside.

The Commissioner (Appeals) shall dispose of the appeal in accordance with law.