C.C.E. Vs. Gujarat Electricity Board

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-01-2003

Reported in : (2003)(156)ELT757Tri(Mum.)bai

Judge : S T Gowri, S Kang

Appellant : C.C.E.

Respondent : Gujarat Electricity Board

Judgement :
1. Revenue filed this appeal against the order-in-Appeal passed by the Commissioner (Appeals).

2. In this case, respondents made an import of certain tubes and claimed benefit of notification No. 177/88. The condition of the notification is that the imported tubes are to be utilised within one year or such extended period, as the case may be. If the importer fails to utilise the tubes within the specified period, they are liable to pay duty.

3. Respondents were not able to use tubes within the specified period and, therefore, asked for extension, which was denied vide letter dated 7.1.94. Thereafter, the respondents again approached the Commissioner for extension of time, which was again denied vide letter dated 26.7.94. As the respondents had not complied with the conditions of the notification, the demand was confirmed in respect of utilised tubes, which were imported after availing the benefit of

notification. On appeal filed by the respondents, the Commissioner (Appeals), vide impugned order, extended the period for utilisation of the tubes, in question.

5. The contention of the revenue is that once the extension was denied by the Commissioner, the impugned order again granting the extension is not sustainable.

6. The contention of the respondents is that earlier extensions were denied without affording an opportunity of hearing to the respondents, therefore, the orders were passed in violation to the principles of natural justice and if the orders were passed in violation to the principles of natural justice, the orders could be challenged in collateral proceedings. Respondents relied upon the decision of the Hon'ble Supreme Court in the case of Nawabkhan Abbaskhan v. State of Gujarat 7. We find that in this case the extension was denied by the Commissioner (Appeals) and the respondents had not filed any appeal against that order. The contention of the respondents is that the orders were passed in violation to the principles of natural justice.

We find no force in these arguments of the respondents as the respondents were aware of the fact that they were not going to utilise the tubes within the specified period, therefore, they had asked for extension of time, which was denied. It is not brought on record by the respondents whether they had asked for any personal hearing. As we are not agreeing with the respondents that the orders denying extension were passed in violation to the principles of natural justice, the ratio of the decision relied upon by the respondents is not applicable to the facts of the present case.State of Punjab and Ors. v. Gurdev Singh and Sh Ashok Kumar reported in 1992 (S.C.) 111 held that wrong or illegal orders are to be challenged and that too within the period of limitation. Hon'ble Supreme Court as under: "It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for." 9. In the present case the extension was denied to the respondents, which was not challenged by the respondents, hence, the impugned order granting for this extension, is not sustainable, hence set aside. The appeal is allowed.