Mark Pharmaceuticals Vs. Cce

Mark Pharmaceuticals Vs. Cce

SooperKanoon Citation : sooperkanoon.com/32747

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-20-2003

Reported in : (2004)(91)ECC152

Judge : P Chacko

Appellant : Mark Pharmaceuticals

Respondent : Cce

Judgement :

1. Having examined the records and heard both the sides, I find that this case needs to be disposed of summarily. Accordingly, the stay application ip allowed and the appeal is taken up.

2. The original authority had confirmed against the appellants a demand of duty of Rs. 37,850 and imposed on them a penalty of Rs. 2,500.

Against that decision the party preferred appeal to the Commissioner (Appeals). In that appeal, they also filed an application under Section 35F of the Central Excise Act for waiver of pre-deposit of the duty and penalty amounts. That application was disposed of by the Commissioner (Appeals) by Stay Order dated 20.9.2002, whereby waiver and stay were granted only in respect of the penalty amount and the party was directed to deposit entire amount of duty. Subsequently, the appellants applied to the Commissioner (Appeals) for a modification of the said order, claiming that they had strong reasons to be entitled to full waiver. In that

application, the party had, inter alia, requested for an opportunity of being heard. No such opportunity, however, was granted. But the appellants received a letter of the Superintendent of Central Excise in the office of the Commissioner (Appeals) dated 23.10.2002, which stated that their application for modification had been rejected. Later on, they received final order of the Commissioner (Appeals), whereby their appeal was dismissed for non-compliance with Section 35F ibid.

4. Ld. Counsel for the appellants has narrated the above facts and submitted that the impugned order has been passed in gross violation of the principles of natural justice. Ld. DR has reiterated the facts stated in the said order.

It is not disputed that the impugned order was passed by the lower appellate authority without giving the appellants any opportunity of being heard. Again, there is no dispute of the fact that the modification application, referred to in para-4 of the impugned order, was rejected without disclosing any reasons or even giving the party any opportunity of being heard. It is pertinent to note that such an opportunity of hearing had been specifically requested for in the Misc.

application. Any order on the Misc. application should be a quasi-judicial order like any order on the original stay application.

In the instant case, no such order was passed by the lower appellate authority. What was done was issuance of a letter by the Superintendent to the party intimating that the Misc. application filed by the latter had been rejected by the Commissioner (Appeals). Such a proceeding cannot be sustained. I am of the view that in the facts and circumstances of this case, the matter must go back to the Commissioner (Appeals). He shall re-consider the appellants' stay application as well as modification application on their merits and dispose of them in the first instance by a speaking order after affording them a reasonable opportunity of being heard. The appeal will then be disposed of on its merits in accordance with law and principles of natural justice, subject, of course, to the decision on the stay and modification applications.

6. The impugned order is set aside and the present appeal is allowed by way of remand.