Flora Continental Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-21-2003

Judge : P Chacko

Appellant : Flora Continental Ltd.

Respondent : Cce

Judgement :
1. Having examined the records and heard both sides, I find that this appeal itself needs to be finally disposed of. Accordingly, I allow the present application and proceed to deal with the appeal.

2. The original authority had by order dated 28.12.2001, confirmed against the appellant a demand of duty of Rs. 33,603/- and imposed on them a penalty of equal amount. The aggrieved party preferred appeal to the Commissioner (Appeals). They also filed an application under Section 35F of the Central Excise Act for waiver of pre-deposit and stay of recovery in respect of the duty and penalty amounts. This application was disposed of by Interim order dated 15.4.2002, whereby the appellants were directed to deposit Rs. 40,000/- within 30 days.

The party did not deposit the amount within the said period but sought further time. They also did not deposit the amount within the extended time. The Commissioner (Appeals), on 12.3.2003, issued a registered notice to the appellants directing them to produce proof of deposit for the purpose of hearing the appeal. A reminder was issued on 2.4.2003.

There was no response to these notices. Consequently on 9.5.2003, the Commissioner dismissed the appeal of the party on the ground of non-compliance with Section 35F ibid. Hence the present appeal.

3. The counsel for the appellants submits that the amount of Rs. 40,000/- was deposited on 29.9.2003 as evidenced by TR-6 challan (copy available on record). The counsel submits that, in view of the above facts, the order of the Commissioner (Appeals) dismissing the appeal on the sole ground of non-compliance with Section 35F without looking into the merits of the case is grossly violative of the principles of natural justice. The DR submits that no intimation of deposit was apparently received by the Commissioner (Appeals) till he passed the impugned order. This submission appears to be correct. The seal ont he letter-dated 6.5.2003 sent by the appellant's Advocate indicates that this letter was received in the office of the Commissioner (Appeals) only on 9.5.2003 the date on which the impugned order was passed. In all likelihood the Advocate's letter was received only after the order was passed. Nevertheless, the vice of negation of natural justice has got to be remedied. Accordingly, I set aside the impugned order and allow this appeal by way of remand. The Commissioner (Appeals) shall take into account the deposit made by the party on 29.4.2003 for the purpose of Section 35F ibid and dispose of their appeal on its merits in accordance with law and the principles of natural justice.