Bhel Vs. Commissioner of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/33348

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-09-2003

Reported in : (2004)(166)ELT274TriDel

Judge : K Usha, N T C.N.B.

Appellant : Bhel

Respondent : Commissioner of C. Ex.

Judgement :

1. Both the above applications are filed by the appellant in Appeal No.E/2567 to 2576/98-NB(A). The above appeals were dismissed by us under Final Order Nos. 170-179/03-NB(A), dated 10-4-2003 [2003 (158) E.L.T.634 (T)]. We followed an earlier order in the case of appellant itself, namely, Final Order Nos. 179-180/99-A, dated 23-2-99 [1999 (112) E.L.T.246 (T)]. It was brought to our notice by the learned DR that the appeals filed by the assessee as Civil Appeal Nos. 3643-3644/99 before the Supreme Court were dismissed on 25-3-2003 [2003 (154) E.L.T. 10 (S.C.)].

2. The above referred ROM was filed by the appellant on 29-7-2003 contending that notice for hearing of the appeal was received only eight days after the date of hearing, therefore, the applicant could not be present in the Court and address arguments on the issue of imposition of penalty which was not legally sustainable. The appellant contended that non-consideration of question of penalty is error apparent on the face of the record and the final order has to be rectified. Later they

filed miscellaneous application No. E/335/03-A on 3-10-2003 seeking to take one more ground in the ROM application.

According to the application substantial portion of the duty demand was barred by limitation which was not considered in the final order.

3. When the matter came up for hearing on 3-12-2003 the learned counsel appearing on behalf of the assessee submitted before us that the final order dated 10-4-2003 itself was taken in appeal by the assessee to Supreme Court. Those appeals were dismissed by the Supreme Court by order dated 26-9-2003 [2004 (164) E.L.T. A132 (S.C.)]. He also mentioned that a review petition dated 27-10-2003 filed against the dismissal of the civil appeals was also dismissed subsequently by the Supreme Court.

4. Since the order passed by this Tribunal dated 10-4-2003 has merged with the order of the Hon'ble Supreme Court dated 26-9-2003 which was also the subject of order in an application for review made by the applicant, we are of the view that no relief can be granted to the applicant in the ROM application filed before us.

5. In view of the above, the ROM and miscellaneous applications stand dismissed.