Commissioner of Central Excise Vs. S.G. Lab

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-07-2005

Reported in : (2005)(183)ELT49TriDel

Judge : S Kang, Vice-, A T V.K.

Appellant : Commissioner of Central Excise

Respondent : S.G. Lab

Judgement :

1. When the case was called none appeared on behalf of the respondents.

The case was adjourned for today at the request of the respondents.

Therefore, the appeals are being taken up in absence of the respondents. Revenue filed this appeal against the common order in appeal passed by the Commissioner of Central Excise.

2. Brief facts of the case are that respondents are engaged in the manufacture of Generic Medicines and P.P. Medicines. A show cause notice was issued to the respondents on the ground that even after crossing the limit under Small Scale Exemption Notification No.8/98-C.E., dated 2-6-98, the respondents continued to clear the goods without payment of duty. The adjudicating authority confirmed the demand of Rs. 1772632/- and penalty of the equal amount on M/s. S.G.Lab. The penalty of Rs. 5 lakhs was imposed on the partner of M/s. S.G.Lab.

3. The present respondents filed appeals before the Commissioner (Appeals) and vide impugned order the appeals were allowed on the ground that adjudication order was passed in violation to the principle of natural justice.

4. The Commissioner (Appeals) held that adjudicating authority had not followed the principles of natural justice and issued the impugned order which is in gross violation to the principles of natural justice as neither copies of relied upon documents had been provided to the assessee nor the opportunity of personal hearing was given to the assessee.

5. The contention of the Revenue is that the adjudication authority granted 5 dates for personal hearing and the notices for hearing were served on the present respondents. The notice for personal hearing was served on the present respondents through Range Supdt. as the factory was found to be closed. In spite of this nobody appears before the adjudicating authority nor filed any reply to the show cause notice.

The contention of the Revenue is also that the present respondents were allowed to inspect the documents and obtained photocopies of the documents in addition to the facts all the documents were provided to the respondents. Therefore, the finding of the Commissioner (Appeals) that the impugned order is passed in violation to the principles of natural justice is not sustainable.

6. We find that the adjudicating authority fixed the case for personal hearing on 6-3-2003, 2-4-03, 3-7-03, 14-8-03 and 21-8-03. The notice of personal hearing was served on the present respondents on 26-3-2003 through Range Supdt. The adjudicating authority also contected Shri Suneel Bagzai, the Partner of the Firm on telephone and informed regarding the personal hearing. On the request of the adjudicating authority, Shri Suneel Bagzai sent his employee Shri Karan Singh to receive the notice of hearing. In spite of this, the respondents had not filed any reply to the show cause notice nor appeared before the adjudicating authority. The Commissioner (Appeals) in the impugned order also taken note of the fact that the respondents were allowed to inspect the record and also to obtain photocopies of the documents. In these circumstances, we find that the finding of the Commissioner (Appeals) is that the impugned order is passed in violation to the

principles of natural justice are not sustainable. Hence set aside. The Commissioner (Appeals) had not decided the issue involved in the appeal on merits. Therefore, the matter is remanded to the Commissioner (Appeals) to decide the appeal on merits after affording an opportunity of personal hearing to the respondents. The appeals are disposed by way of remand.