Vardhman Cable (India) Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-28-2005

Reported in : (2005)(184)ELT275TriDel

Judge : A T V.K., P Bajaj

Appellant : Vardhman Cable (India)

Respondent : Commissioner of Central Excise

Judgement :

1. These two appeals have been filed by M/s. Vardhman Cables (India) and Shri Parag Jain, Director against dismissal of their Appeal by the Commissioner (Appeals) on the ground of time limit.

2. We heard Shri Kamaljeet Singh, learned Advocate and Shri Bipin Verma, learned Departmental Representative. Learned Advocate submitted that they had filed the Appeal before the Commissioner (Appeals) on 20-8-2004 against Order-in-Original No. 113/2004, dated 20-4-2004 passed by the Assistant Commissioner; that the said Order-in-original was communicated to them on 22-6-2004 and as such the Appeal filed by them on 20-8-2004 was within the time limit specified in Section 35 of the Central Excise Act; that the Commissioner (Appeals) made his own inquiry from the Assistant Commissioner who informed him that the Order-in-original was despatched to the Appellants on 20-4-2002 itself and Order was delivered to the Appellants on 29-4-2004 which has also been confirmed by Post Master; that the Commissioner (Appeals) on the basis of said information collected

by him on his part has dismissed the Appeal without affording any opportunity of hearing to them. We agree with the learned Advocate that the present impugned order has been passed by the Commissioner (Appeals) in gross violation of the principle of natural justice as neither the letter of the Assistant Commissioner nor the communication received from Post Master had been brought to the notice of the Appellants and no opportunity has been given to them to controvert the same. We, therefore, set aside the impugned order and remand the matter to the Commissioner (Appeals) to decide the matter afresh after furnishing the copies of the communication relied upon by him to the Appellants and also after affording a reasonable opportunity of personal hearing to them. Both the appeals are allowed by way of remand.