

Kuber (international) and ors. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-01-2005

Reported in : (2005)(103)ECC35

Judge : P Bajaj, M T K.C.

Appellant : Kuber (international) and ors.

Respondent : Cce

Judgement :

1. These appeals have been directed by the appellants against the impugned order-in-original vide which duty alongwith penalty as detailed therein, has been confirmed against them on account of clandestine removal of the goods during the period in dispute.

2. The main ground on which at the outset the correctness of the impugned order has been questioned by the Counsel is the non-supply of the documents and non-affording of personal hearing to the appellants before passing of the impugned order. Ld. Counsel has contended that impugned order has been passed in violation of the principles of natural justice. He has also contended that even if the appellants failed to file the reply to the SCN, still they are entitled to personal hearing to explain about the documents which were collected by the Revenue during the investigation, but no personal opportunity has been afforded to them. He has referred to the ratio of law laid down in the case of Seth Enterprises Pvt. Ltd. v. CC, 1996 (88) ELT 652 wherein Hon'ble Calcutta High Court has observed

that the party is entitled to opportunity of hearing before passing of the final adjudication order, even if it has not availed right of reply, to SCN.3. On the other hand Ld. DR has contended that the appellants had been prolonged in the proceedings and inspite of affording them sufficient opportunity they failed to file the reply to the SCN. He has also contended that all the documents were supplied to the appellants alongwith SCN and referred to their acknowledgements letter in that regard.

4. After going through the record, we find that the contention of the Counsel deserved to be accepted. The perusal of the record shows that when SCN was served to the appellants, the Deptt. obtained certificates from them regarding receipt of the documents. But strangely when the appellants demanded the copies of the documents through various letters from time to time/they were never confronted with those certificates.

No reference was made to those certificates while sending reply to their letters by the Deptt. that they had already received the documents. Rather in one of the letters dt. 17.8.03 even the AC had directed the Supdt. to supply the photocopy of the documents to the appellants. There is no reference to the earlier receipt of the documents by the appellants, in this letter or in any other communication from the Deptt. to them. Therefore, prima-facie it is very difficult to accept the contention of the DR, that all the documents were supplied to the appellants at the very start of the adjudication proceedings alongwith SCN. The contention of the Ld. DR that the appellants are responsible for the delay earlier caused in the conclusion of the proceedings, also cannot be accepted. The record shows that there was long correspondence between the Deptt. and the appellants regarding the supply of the documents and the complete documents were not supplied to the appellants. If the appellants failed to file reply to the SCN, nothing prevented the adjudicated authority to conclude the hearing after supplying the documents.

5. The right of personal hearing has also been denied to the appellants. In the light of ratio of law laid down in the above referred case, even in the absence of filing of the reply to SCN, the appellants were entitled to be heard.

6. In the light of the discussions made above, we find that the impugned order has been passed in violation of the principles of natural justice and as such the same is set aside. The case is sent back to the adjudicating authority for fresh decision. The appellants will be afforded reasonable opportunity to inspect the documents themselves which they require and then to file reply to SCN if they desired. The adjudicating authority shall dispose of the case finally, within a period of six months from the date of receipt of copy of the order after allowing an opportunity of personal hearing to the appellants. The appeals and stay applications accordingly stand disposed of.

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