

Maharashtra State Electricity Vs. Commr. of C. Ex.

Maharashtra State Electricity Vs. Commr. of C. Ex.

SooperKanoon Citation : sooperkanoon.com/40121

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-31-2005

Reported in : (2005)(189)ELT433TriDel

Judge : S Kang, Vice-, N T C.N.B.

Appellant : Maharashtra State Electricity

Respondent : Commr. of C. Ex.

Judgement :

1. When case was called none appeared on behalf of the appellants in spite of notice. The appeal is being taken up in the absence of the appellant.
2. Heard the learned DR. Appellant filed this appeal against the adjudication order passed by the Commissioner, Meerut whereby penalty of Rs. 50 lakhs has been imposed under Rule 209 A of the Central Excise Rules.
3. The brief facts of the case are that M/s. BHEL cleared the goods by availing the exemption under Notification No. 108/95, dated 28-8-95 without payment of duty to the appellants. Show cause notice was issued to M/s. BHEL for payment of duty and for imposition of penalty on the ground that goods cleared by M/s. BHEL in question were not entitled for exemption under Notification No. 108/95. Commissioner confirmed the duty demand on M/s. BHEL and also imposed penalty on M/s. BHEL and the appellant as well. Appeal filed by M/s. BHEL came up before the Tribunal and the Tribunal vide Final Order No. 360/03-B, dated 23-4-

2003 held that demand is time-barred and allowed the appeal filed by M/s. BHEL.

4. The adjudicating authority in the impugned order imposed penalty on the present appellant on the ground that the appellant had facilitated to evade payment of duty. We find that the Hon'ble Supreme Court in the case of C.C.E., v. HMM Ltd. - held that question of penalty would arise only if the department is able to sustain its demand. In the present case, as the demand against M/s. BHEL is already set aside by the Tribunal vide Order dated 23-4-2003, therefore, the imposition of penalty on the present appellant is not sustainable and is set aside. The appeal is allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com