Vimal Kumar Dhall Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-15-2005

Judge : M T K.C.

Appellant : Vimal Kumar Dhall

Respondent : Commissioner of Central Excise

Judgement :

1. Shri Vipul Raheja, Ld. Advocate appeared for hearing. He stated that although the Vakalatnama is in the name of Shri S.S. Bhangoo and Shri K.K. Anand but he is working in their company. He will submit Vakalatnama in his own name within a weeks time and pleaded that he may be heard as the other two Advocates in whose name Vakalatnama has been filed are not available.

2. In the stay application, the Director of M/s. Osho Forge Pvt. Ltd., the applicant is seeking stay of the recovery of penalty of Rs. 50,000/- imposed on him. It was pleaded that the company has already deposited the entire amount of duty and the penalty amount has been waived on the company. Therefore, the penalty on Shri Vimal Kumar Dhall may also be waived.

3. It was pointed out on behalf of the Revenue, that the penalty on the company was dropped by following the decision of the Tribunal in the case of CCE, Delhi v. Machine Montell (I) Ltd. .

However, the role of the present applicant is very clear and specific that he sold the goods without payment of duty on cash payment basis.

The Director was not authorised by the company to do so. Therefore, he is personally liable for such omission on his part and stay may not be granted.

4. I agree with the Revenue that when a Director has clandestinely cleared the goods outside the term of his appointment as a Director, he is personally liable for the penalty for his act of clandestine clearance. Therefore, considering the facts and circumstances of the present case, the applicant is directed to pre-deposit a sum of Rs. 25,000/- (Rupees Twenty-Five Thousand only) within a period of 8 weeks and report compliance on 23rd Feb., 2006. On such pre-deposit, the recovery of balance amount is waived for hearing the appeal. If the amount stated above is not so pre-deposited, the appeal will stand dismissed.