Harish Kumar Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-26-2006

Reported in : (2006)(110)ECC524

Judge : R Abichandani, M T K.C.

Appellant : Harish Kumar

Respondent : Commissioner of C. Ex.

Judgement :

1. The applicants seek restoration of their respective appeals which were dismissed on the ground that the pre-deposits were not made by them, contending that there were no orders against them to make such pre-deposits, and because their appeals were grouped along with other appeals in which the manufacturers and Technocrat Marketing Pvt. Ltd. were ordered to make deposits, and since they failed to make such deposits, this group of appeals also came to be dismissed along with the appeals of those defaulters.

2. There is no dispute over the fact that only the appellants, M/s.

Hindustan Machines, Asiatic Engineers (P) Ltd., M/s. Dynamic Engineers, M/s. Konark Industries, who were manufacturers were directed to deposit 50% of the duties payable by them as stated in paragraph-7 of the order granting stay. The other appellant, M/s. Technocrat Marketing Pvt. Ltd. was ordered to deposit Rs. 25 Lac against the penalty of Rs. 50 Lac which was imposed on that appellants.

There was no separate order made for pre-deposit of any amount on any of the other appellants, whose appeals have come to dismiss on account of the non-observation of the conditions of pre-deposit on the part of the appellants, who were directed to make such pre-deposits. The applications for stay made by the present applicants will therefore have to be decided on merits in view of the defaults committed by the other appellants, who have not made pre-deposits and because the case of these applicants was not considered on merits for waiver. The learned Counsel for the applicants also submits that their applications for stay should be heard on merits.

3. We, therefore, direct that only appeals of the present applicants be restored to file and the stay applications made by them be heard on merits. The present restoration applications are accordingly allowed.