Raymond Ltd. Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/44603

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-16-2007

Reported in : (2007)(116)ECC205

Judge : M Ravindran, S T T.V.

Appellant : Raymond Ltd.

Respondent : Cce

Judgement :

1. During the hearing of this appeal, it has been brought to our notice that the show cause notice dated 28.09.2001 issued by the Department was duly replied by the appellants on 20^th December, 2001 and also by a letter dated 08.01.2002 the appellants had requested the adjudicating authority not to insist on personal hearing as they were busy with other urgent matters.

2. The matter was, however, not concluded by the respondents immediately thereafter, but a corrigendum to the show cause notice incorporating certain amendments was sent to the appellants on 03.11.2004. In this corrigendum, the last date for filing the reply was fixed as 06.12.2004.

3. In the order-in-appeal passed by the learned Commissioner (Appeals), the following observations have been made: On going through the case records, it is observed that the appellant had submitted the reply to the show cause notice under their letter of Ref. RL/ST Reply/2001-02 dated 20.11.2001. It is further

observed that the personal hearing in the case was fixed by the Assistant Commissioner which was scheduled to be held for 09.01.2002. It is on record that the appellant in response to the aforesaid letter of hearing had requested the adjudicating authority to decide the matter on merits by considering the submissions made by them under their reply dated 20.12.2001.

It is also observed that the adjudicating authority had issued a corrigendum dated 03.11.2004 to the aforesaid show cause notice for which there is nothing on record that the appellant had submitted the reply or any personal hearing on the matter was conducted.

Accordingly, I am of the view that the impugned order should have been passed after the receipt of the reply from the appellants and conducting personal hearing.

4. From the above observations, it is clear that when the corrigendum incorporating the changes in the Finance Act were sent to the appellants on 03.11.2004, as an amendment to the show cause notice dated 28.09.2001, the appellants were not given further opportunities to appear in person and defend their case before the adjudicating authority. We, therefore, consider this as a serious lapse in the adjudication proceedings and remand the matter to the adjudicating authority for a de novo adjudication after giving adequate opportunities to the appellants to file a reply and be heard in person before making a final order in the matter. Both the sides have come before us with a plethora of decision of the Hon'ble Courts of Law, claimed to be supporting their respective stand. We therefore, direct the adjudicating authority to give fresh hearing and finalise the matter in accordance with law preferably within eight weeks from the date of receipt of this order by the adjudicating authority.

6. I entirely agreed with the view of my learned brother of remanding the matter back to the adjudicating authority for reconsidering the issue. At the same time, I would also like to make a note that the appellate authority having considered and admitted that there is violation of principles of natural justice, himself should have sent the matter back to the lower authorities instead of deciding the matter on merits. This is a settled law. The appeal is allowed by way of remand in the above terms.