Shree Prithvi Steels Rolling Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-11-2007

Judge : P Das

Appellant : Shree Prithvi Steels Rolling

Respondent : Cce

Judgement :

1. Common issue is involved in these appeals and therefore both the appeals are taken up together for disposal.

2. The appellants filed these appeals against the order of Commissioner of Central Excise passed under Section 14A of Central Excise Act, 1944.

The learned advocate on behalf of the appellants submits that the Commissioner of Central Excise passed the order without giving any opportunity of hearing in violation of principle of natural justice. He submits that the Hon'ble Supreme Court in the case of Rajesh Kumar and Ors. v. Deputy Commissioner of Income-Tax and Ors. reported as in similar provisions under Section 142(2A) of the Income-Tax Act, 1961 held that the assessees suffers civil consequences and any order passed by it would be prejudicial to him, principle of natural justice must be held to be implicit. He submits that the Commissioner appointed the special auditors without giving any opportunity of hearing to the assessee which is prejudicial to them.

3. The learned DR on behalf of the revenue submits that order under Section 14A of the Central Excise Act is not appellable order. He submits that the Commissioner passed the order with the prior approval of the Chief Commissioner, which is not covered under Section 35B of the Central Excise Act, 1944. He also submits that the Hon'ble Supreme Court in the case of Rajesh Kumar and others (Supra) held that direction issued under 142(2A) of the Income Tax Act is not appellable order.

4. After hearing both the sides and on perusal of the records, I find force in the submission of the learned DR. In terms of Section 35B of Central Excise Act, 1944 any person aggrieved by any order of Commissioner of Central Excise as an adjudicating officer, Commissioner (Appeals) may file appeal to the appellate Tribunal. It is seen that Section 14A of the Central Excise Act, 1944 provides special audit in certain cases with the prior approval of Chief Commissioner to direct manufacturer or any person to get the accounts of his factory, office, depots, distributors or any other place may be audited by a cost accountant nominated by the Chief Commissioner. So, the impugned order/direction passed by the Commissioner with the prior approval of the Chief Commissioner is beyond the scope of Section 35B of the Central Excise Act, 1944 and is not appellable order. The Hon'ble Supreme Court in the case of Rajesh Kumar and others (Supra) observed that direction issued under Section 142(2A) of Income Tax Act is not appellable order which is parimateria to Section 14A of the Central Excise Act, 1944. So, the appeals filed by the appellants against order under Section 14A of Central Excise Act is not maintainable before the Tribunal and accordingly both the appeals are rejected.