

Calcom Vision Ltd. Vs. Commissioner (A), Cus. and C. Ex.

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SooperKanoon Citation : sooperkanoon.com/491227

Court : Allahabad

Decided On : Apr-09-1999

Reported in : 2000(71)ECC489; 1999LC843(Allahabad); 2000(118)ELT20(All)

Judge : M.C. Agarwal, J.

Acts : [Central Excise Act, 1944](#) - Sections 35F; [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 338 of 1999

Appellant : Calcom Vision Ltd.

Respondent : Commissioner (A), Cus. and C. Ex.

Advocate for Def. : S.N. Srivastava, Chief Standing Counsel

Advocate for Pet/Ap. : Bharat Ji Agarwal, Sr. Adv.

Disposition : Petition allowed

Judgement :

M.C. Agarwal, J.

1. By this petition under Article 226 of the [Constitution of India](#), the petitioner challenges an order, dated 23-3-1999 passed by the Commissioner (Appeals), Customs & Central Excise, Ghaziabad, whereby it dismissed the petitioner's application for waiving the condition of pre-deposit.

2. I have heard Sri Bharat Ji Agarwal, learned Senior Advocate for the petitioner and Sri S.N. Srivastava, learned Chief Standing Counsel for the respondents. No counter affidavit was proposed to be filed and the Writ Petition is disposed of finally at the admission stage.

3. The Asstt. Commissioner, Central Excise, Division III, Noida, disallowed [Modvat] credit to the extent of Rs. 6,98,418.80 and raised a demand for that amount against which an appeal has been preferred by the petitioner before the said Commissioner. Section 35F requires the appellant to make a pre-deposit of the adjudicated dues without which no appeal can be entertainend. The proviso to Section 35F, however, authorises the appellate authority to waive the condition of pre-deposit wholly or partially, if it is of the opinion that undue hardship will be caused to the appellant if it is required to deposit the amount. It is in exercise of that power that the petitioner appealed to the Commissioner for waiving the condition of pre-deposit on the ground that it had wrongly denied the moderate (sic) credit and it had a strong prima facie case. The Commissioner in the impugned order has noted the facts which show that only some procedural deficiencies have been made the basis of the denial of the moderate (sic) credit. It is true that the financial hardship was not stated before the Commissioner but in the writ petition it has been specifically stated that the petitioner has drawn from the banks sums totalling to about Rs. 1.5 crores. In my view, looking to the facts and circumstances of the case, it was a fit case in which the partial exemption should have been allowed to the petitioner at the stage of the first appeal.

4. I, therefore, allow this writ petition and setting aside the impugned order, it is ordered that in case the petitioner deposits Rs. 1.5 lacs with the adjudicating authority by 30th April, 1999, the condition of pre-deposit of the balance shall stand waived.