Uptron Powertronics Vs. Collector of Central Excise, Meerut

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Court : Delhi

Decided On : Feb-04-1987

Reported in : 1987(13)ECC114; 1987(28)ELT61(Del)

Judge : Mahinder Narain and; Yogeshwar Dayal, JJ.

Acts : Central Excise Act, 1944 - Sections 35F

Appeal No. : C.W. 1550/86

Appellant : Uptron Powertronics

Respondent : Collector of Central Excise, Meerut

Judgement :

Yogeshwer Dayal, J.

1. This Writ Petition impugns an order dated 26.5.86 whereby the learned customs Excise and Gold (Control) Appellate Tribunal New Delhi, directed the petitioner to deposit 50 percent of the sum demanded as a pre-condition before hearing of the appeal by a particular date.

2. It specifically mentioned in the impugned order that the Tribunal need not go into the question of prima-facie nature of the case of the appellant. To say the least, this approach is totally incorrect in law. In every case if the appellant wants any discretionary relief in this favor, he has first to show prima facie, substance in

his claim. On this being done he then has to further show under hardship to him. The reverse is not to be done, i.e. first show hardship, and if he cannot show hardship then further question arises of prima facie substance in the claim before the Appellate Authority. Merely because the petitioner are subsidiary of U.P. Electronics Corporation, it does not mean that it cannot get into financial difficulty. The financial position of the appellant has to be seen.

3. In any case the Tribunal's order suffers from erroneous approach.

4. In this view of the matter, we have no option but to set aside the order of the Appellate Tribunal direct the Tribunal to hear the appeal on merits without pre-condition. We are particularly allowing the petitioner to have the appeal heard without any pre-condition because the petitioner is a subsidiary wholly owned by the U.P. State Corporation. The alleged supply by the appellant was also being made by the appellant petitioner to the departments of the Government only. Prima facie there could be no intention of evasion of duty. However, this court at this stage cannot finally decided the merits of the case. It will be for the Tribunal to decide all questions of law and facts.

5. Though the W.P. was at the show cause stage but without it fit to dispose off it in the circumstances above.