

Air Reduction Co. Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-09-1995

Reported in : (1996)(83)ELT392TriDel

Appellant : Air Reduction Co. Ltd.

Respondent : Collector of Central Excise

Judgement :

1. In this stay application, the applicant is seeking waiver of pre-deposit of duty amount of Rs. 1,85,076.59 and penalty of Rs. 50,000/- and also there is a prayer of remand of this matter. By the impugned order, the Id. Collector has dismissed the appeal as non-maintainable for non-compliance of requirement of Section 35F and he has directed them to pay duty as confirmed in order-in-original. Id.

Advocate submits that they had filed a modification application four months earlier to passing of the impugned order alongwith the Annexure showing the financial condition of the appellant company. It is his submission that their modification application should have been considered and disposed of before the dismissal of the appeal for non-deposit of the amount. Even otherwise he submits that Id. Collector should have given them a show cause notice before dismissing the appeal. In support of his plea, he relied on the judgment of the Karnataka High Court as reported in 1995 (75) E.L.T. 470 and also one order of the Tribunal as rendered in the case of Jain Steel Industries v. Collector of C. Excise as reported in Final Order No. 153/95-NRB, dated 6-3-1995, as reported in 1995 (79) E.L.T. 336. The Tribunal has remanded the matter for de novo on similar facts and

circumstances of the case. Ld. DR has no objection for remand of the case with a direction of the Id. Commissioner to consider the modification application filed on 2-1-1995 which has been annexed to the appeal memo at page 70.

2. We have considered the submissions made by both the sides. We grant waiver of pre-deposit and [take] the appeal for disposal as per law.

The appellant had filed modification application, supported by annual report and accounts for the year ended 31-3-1993. The Id. Commissioner should have considered this modification application before dismissal of the appeal and Id. Commissioner has also not given them a show cause notice before disposal of the appeal. Therefore, in the circumstances and in the light of the ratio of the judgments cited before us, we set aside the impugned order and remand the case to the Id. Commissioner.

The Id. Commissioner should consider the modification application. The Id. Commissioner shall grant the applicants personal hearing to make their submission on the modification application. Appeal is remanded for de novo consideration.

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