

Bharat Containers P. Ltd. Vs. Commr. of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-19-1996

Reported in : (1997)(91)ELT373Tri(Mum.)bai

Appellant : Bharat Containers P. Ltd.

Respondent : Commr. of Central Excise

Judgement :

1. This appeal is directed against the Order-in-Appeal No.PPM-544-547/BII-371-374/87, dated 17-5-1988, so far as it relates to the rejection of the appeal filed by the present appellants, against the Order-in-Original, dated 4-11-1986 passed by the Assistant Collector of Central Excise, Dn. I, Mumbai II.2. Shri D.K. Subhedar, the Id. Advocate submits that the Commissioner (Appeals) has not granted any [personal] hearing, in spite of their having requested in the memorandum of appeal and also by a separate letter written to him on the 13th April, 1988. In his submission there are enough evidences to satisfy that the claim for refund made, was within the stipulated period as they had already submitted application on 3-1-1985. He also pleads that they are in a position to satisfy the authority that the duty burden has been passed over and even under the amended law, they would be eligible to get the refund.

3. Shri Krishnamurthy, the Id. JDR, submits that with the settled position of law, the Commissioner (Appeals) felt it not necessary to [fixe] final hearing, as he was bound by the law as was available. In his submission it should not be taken as non-compliance with the principles of natural justice.

4. In deciding the appeal, if the party seeks for personal hearing, that cannot be denied. Right of hearing is a statutory right given to them. Even if prima facie it appears that the issue was covered by some decision, that could have been confronted and explanation, therefore, could have been obtained. This has not been done and instead the claim of the appellants is rejected as time bar by the Collector. The appellants raised the specific demand for hearing vide their letter dated 13-4-1988. Thus, it appears that the principles of natural justice as also the statutory provisions for granting personal hearing, have not been complied with by the Commissioner (Appeals), and hence, the order passed ex parte is set aside, and matter is remanded back to the Commissioner of Central Excise (Appeals), Mumbai for granting personal hearing, and decide their appeals according to law. The Commissioner (Appeals) may make efforts to dispose of matter within a period of three months from the date of communication of this order.

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