

Customs, Excise and Gold Tribunal - Mumbai

Noor Sales Corporation And E.G. ... vs Commissioner Of Central Excise, ... on 2 May, 2001

ORDER K. Sreedharan, President

1. By order-in-original No. GF/I/4/Add/98 dated 27/02/1998 the Additional Commissioner, Mumbai-IV confirmed the duty demand of Rs. 5,14,759/- on M/s. E.G. Kantawala, Mumbai - 11. He also confirmed the demand of Rs. 31,780/- invoking the provisions of Rule 57-I of the Central Excise Rules, 1944 read with Section 11A of the Act. Goods worth Rs. 82,075/- were confiscated giving option to redeem it on payment of Rs. 16,415/-. Individual penalty of Rs. 1 lakhs was imposed on M/s. E.G. Kantawala. Rs. 50,000/- on M/s. Noor Sales Corporation was also imposed. On Shri Nooruddin A. Kantawala a personal penalty of Rs. 50,000/- was imposed invoking the provisions contained in Rule 209A of the Central Excise Rules, 1944.

2. Aggrieved by that order two appeals were filed before the Commissioner (Appeals). Along with the appeals applications for waiver of pre-deposit were also moved. In the appeal filed by M/s. E.G. Kantawala the Commissioner (Appeals) directed appellant to deposit an amount equivalent to 50% of the total disputed amount of duty, penalty and fine as required by Section 35F of the Act. In the other appeal appellant was directed to deposit an amount equal to 50% of the total penalty including personal penalty as condition precedent for entertaining the appeal. These orders were passed by the Commissioner (Appeals) without hearing the appellant. From the order it would appear that appellants were heard before the orders were issued. This fact is disputed by the appellant. Be that as it may. The appellants did not deposit the amounts on account of their financial hardship in which they were placed. Consequently the Commissioner (Appeals) dismissed their appeals. hence parties have moved this Tribunal by filing these appeals. Along with these appeals applications have been filed for staying the operation of the orders passed by the authorities together. We have heard the Learned Counsel for the appellants and Learned Departmental Representative. We perused the records. We feel that appeals itself could be disposed of at this stage.

3. In the course that we are resorting to, it is not necessary to narrate the facts in detail. Suffice to say that amount of duty claimed in the show cause notice was confirmed by the authorities below and the personal penalties imposed on the appellant. The order-in-original, whereby the said liability cast upon the appellants was challenged before the Commissioner (Appeals). The Commissioner (Appeals) without considering the contention of the parties regarding their financial difficulties appears to have ben passed a stereotyped order directing deposit of 50% of the amount as condition precedent in entertaining the appeals under Section 35F of the Act. The said approach made by the Commissioner (Appeals) does not appear to be a proper judicial approach. Consequently we set aside the order passed by the Commissioner (Appeals) on the stay application as well as the final order dismissing the appeals. We direct the Commissioner (Appeals) to take back the appeals and the stay applications and dispose of them after affording an opportunity of being heard to the appellants. Their contention regarding financial hardship in making the pre-deposit contemplated by Section 35F should be specifically referred to by the Commissioner (Appeals). The appeals are disposed off in the above manner remanding the entire matter to the lower appellate authority. Since appeals before that authority was a long pending one, we direct the Commissioner (Appeals) to pass the final order as expeditiously as possible. Stay petition moved by the appellants

also stand disposed off in the above terms.