Collector of Central Excise Vs. Aims Oxygen Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-25-1996

Reported in : (1997)(89)ELT510TriDel

Appellant : Collector of Central Excise

Respondent : Aims Oxygen Pvt. Ltd.

Judgement :

1. This is a departmental appeal filed under Section 35B(2) of the Central Excise Act, 1944 (for short, the Act). The copy of the impugned order produced in unreadable and D.R. was required on earlier occasion to produce readable copy, but that has not been produced. D.R. prays for time. Meanwhile, the respondent had raised a preliminary objection to the maintainability of the appeal on the ground that the authorisation granted by the Collector of Central Excise for filing the present appeal is not proper. We have heard both sides on the preliminary objection.

"I, hereby authorise the Superintendent of Central Excise and Customs, Headquarters, Vadodara under Section 35B(2) of the Central Excises and Salt Act, 1944 to file appeal to the Appellate Tribunal on behalf of the Collector of Central Excise and Customs, Vadodara, in the matter decided by the Collector (Appeals) Central Excise, Bombay vide his Order No. M-191/BRD-116/86, dated 14-3-1986 in respect of M/s. AIMS Oxygen Pvt. Ltd., Baroda".

There is dispute that the above authorisation relates to the present appeal and order referred to in the authorisation is the order impugned in the present appeal.

3. The contention of the respondent is that the authorisation is not proper, inasmuch as it does not state the reasons which persuaded the Collec- tor to grant authorisation and it does not indicate application of mind. Learned Counsel relied on the decision of the Tribunal in Collector of Central Excise, Vadodara v. Raghuvir Texturizer Pvt. Ltd. -1996 (86) E.L.T. 647 (Tribunal). Apparently, the authorisation in this case was also more or less similar to the authorisation in the present case. The Bench inferred that the authorisation was granted without application of mind. This inference was drawn on the basis that the authorisation did not indicate whether the order passed by the lower authority was legal or otherwise. In the absence of such averment, the Bench took it that the authorisation was neither legal nor proper.

4. Attention of the Bench which decided the above case was not drawn to the earlier decisions of the Tribunal and a decision of the Supreme Court.In Collector of Central Excise v. K. Manibhai & Co. -1989 (43) E.L.T. 671 (Tribunal), Shri D.C. Mandal, Member Technical reserved that an authorisation will not become invalid due to the absence of reasons or ground on which the opinion was formed. In Collector of Central Excise v. Electrols -1990 (47) E.L.T. 463 (Tribunal), the Tribunal held that it was not necessary for the Collector to disclose the ground on which he formed the opinion. The same was the view taken in Collector of Central Excise, Madras v. Sundaram Fasteners Ltd., Madras -1985 (20) E.L.T. [323] (Tribunal).In Collector of Central Excise v. Berger Paints India Ltd. -1990 (47) E.L.T. 210 (SC), authorisation had not been produced before the Tribunal which accordingly dismissed the appeal on that ground.

Authorisation was placed before the Supreme Court. The reported decision has extracted the language of the authorisation. We find that it is in identical terms, inasmuch as authorisation in that case also did not indicate the grounds or reasons for the authorisation. The Supreme Court upheld the authorisation in the following words : "Having regard to the purpose of these rules as we conceive it, namely, to ensure that there was authorisation an application of mind to the points in respect of which the question for filing an appeal arose and that the appeal was duly authorised by the Collector, and was filed by the person authorised by the Collector in order to ensure that frivolous and unnecessary appeals are not filed, we are of the opinion that in the present context and in view of the terms of the rules and the purpose intended to be served, the appeal was competent and was duly filed in compliance with the procedure as enjoined by the rules." 7. It is for the Collector of Central Excise to peruse the records, apply his mind and come to the conclusion whether appeal is required to be filed against the order of the Assistant Collector. Once he peruses the files, applies his mind and grants authorisation, the matter is at an end. As pointed out in some of the decisions of the Tribunal, it is not the requirement of law that the grounds and the reasons must be indicated in the letter of authorisation. Of course, grounds and reasons should have been noticed in the file. Where there is authorisation by the appropriate authority, authorising a particular officer to file an appeal against a particular order, prima facie it would indicate that the authority had perused the papers and applied his mind before granting an authority. There may, of course, be cases where an authorisation might have been granted without due application of mind, in which case that may be a matter for verification. What we are faced in this case is the objection that the authorisation is defective, inasmuch as it does not advert to the grounds or reasons.

This contention has to be rejected in view of the decisions of the Tribunal in K. Manibhai & Co. and Electrols and the decision of the Supreme Court in Berger Paints India Ltd. We, therefore, hold that the appeal is maintainable.

8. The appeal is adjourned to 18-11-1996 for hearing. Shri K.K. Anand, Advocate for respondent has agreed to supply readable copies of the impugned orders and show cause notice.