

Collector of Central Excise, Vs. M/S. Bombay Switchgears

Collector of Central Excise, Vs. M/S. Bombay Switchgears

SooperKanoon Citation : sooperkanoon.com/20075

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-18-2000

Reported in : (2001)(135)ELT927Tri(Mum.)bai

Appellant : Collector of Central Excise,

Respondent : M/S. Bombay Switchgears

Judgement :

1. This appeal has been filed by the department against the decision of the Collector of Central Excise, Mumbai, made in Order-in-Appeal No.GS/216/BI/93 dated 21.4.1993 in and by which the learned Collector (Appeals) set aside the Order-in-Original dated 17.12.1990 passed by the Assistant Collector of Central Excise, Dn. G-I, Mumbai-I.2. The respondents were manufacturing goods under chapter 85 of the CETA. They were also availing modvat facility in terms of rule 57A of the Central Excise Rules. It would appear that in the month of March, 1990 the factory of the respondents got fire and it is alleged that unutilized duty paid inputs on which modvat credit was availed were reported to have been destroyed. A show cause notice dated 28.9.1990 was issued demanding Rs. 18,343.94 on the ground that the modvat credit was not admissible to the duty paid inputs which were destroyed before they were actually being used in the manufacture of final products. The Assistant Collector by order-in-original dated 14.12.1990 dropped the demand on the ground that the duty cannot be demanded in case of loss of goods and the demand was hit by limitation being issued after lapse of six months. The Collector of Central Excise by the impugned order confirmed the view

of the Assistant Collector. The Collector (Appeals) directed that the case be decided afresh within the limits set out by him in the impugned order. The issue to be decided by the adjudicating authority was the issue on limitation. Hence the present appeal by the department.

3. In the department's appeal, authorization has been issued under the following terms:- I, J.H. Joglekar, Collector of Central Excise, Bombay-I Collectorate, do hereby authorize Shri G.B. Yadav, Assistant Collector of Central Excise, Bomaby-I Collectorate to prefer an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, WRB, Bombay in pursuance of the provisions of Section 35-B of the Central Excise and Salt Act, 1944 against the Order-in-Appeal No. GS/216/BI/93 dated 21.4.93 (issued from F.NO. V.2(85)103/BI/R/91 passed by Collector of Central Excise (Appeals) Bombay, against the EA-2 reference dt. 18.12.91 in Order-in-Original No. GI/392/90 dated 14.12.1990 (issued from F.NO. V(85)4-182/90) passed by the Assistant Collector, Central Excise, Division G.L., Bombay-I in the case of M/s. Bombay Switchgear, Bombay.

In the judgment of the Supreme Court in the case of Rohit Paper Mills 1998 (27) RLT 201 the Supreme Court held against the department on the ground that authorization was not done in a proper way.

4. The Tribunal in a later judgment in the case CCE, Bombay vs. Nelco Ltd. 2000 (37) RLT 611, after taking note of the said Rohit Paper Mills case decided by the Supreme Court, has held that the judgment of the Supreme Court has to be seen in the light of the facts revealed therein. In fact in paragraph 4 of the said judgment the Tribunal has observed as follows:- "We have considered the submissions of both the sides. We observe that the Collector, Central Excise has authorized the Assistant Collector to prefer an appeal before the Appellate Tribunal against the impugned Order. No one will authorize anybody to prefer an appeal unless and until he is of the opinion that the order in question is not legal and proper. The fact of authorization by itself is sufficient indication that the Collector has considered the Order in question to be not legal & proper. In Rohit Pulp Paper Mills case, supra, the Hon'ble Supreme Court dismissed the appeal filed by Revenue as the "noting" made by Collector was not produced for the perusal of the Hon'ble Court

though it was urged in the Memorandum of Appeal that the Tribunal had filed to consider that the subordinate authority had given detailed reasoning for filing appeal as could be seen from the notesheet and same not was endorsed by the Collector. The Revenue had itself referred to Note Sheet in its Memorandum of Appeal and even then did not produce the same and accordingly Supreme Court dismissed the Appeal "having regard to the fact that it has failed to produce the submissions, if any, that the Collector in the present case has endorsed." In the present matter, there is no requisition made by the Respondent to produce the Note Sheet. Accordingly we are of the view that the appeal is maintainable." In view of the said observation of the Tribunal, the appeal was held to be maintainable.

5. Subsequently it has to be mentioned that WRB in number of cases has held against the department one of which is in the case of Piramal Spinning & Weaving Mills, but learned DR would bring it to our notice that last week, i.e. on 4.12.2000, the Tribunal in the case of Choksi Brothers (Appeal no. E/2486/93) having considered all aspects of the matter, has decided in favour of the department.

6. We have considered the matter in all perspective. The words not legal and proper as found in section 35B of the Central Excise Act have to be considered in a proper perspective. One of the views which is possible is as observed by the Tribunal in Nelco's case ((37) RLT 611), viz. no one will authorize anyone to prefer an appeal unless and until he is of the opinion that the order in question is not legal and proper. But the fact that the section as enacted by the Parliament, states not legal and proper. Will it not have a mandatory effect when authorizing an appeal? This is an important aspect which has to be considered by the Tribunal. We are therefore of the view that in view of the existence of the difference of opinion between the WRB in the case of Piramal Spinning & Weaving Mills and the judgment of the Delhi Bench in the case of Nelco as also in the later WRB in Choksi Bros., we think it fit for the larger bench of the Tribunal to consider the matter and determine the issue. We therefore direct that the appeal may be placed before the Hon'ble President of the CEGAT for constituting a larger bench to decide the question and issues arising in the appeal.

Registry is directed to send the appeal to the Hon'ble President for taking necessary action in this regard. Ordered accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com