

Mahindra and Mahindra Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-21-1983

Reported in : (1983)LC773D Tri(Delhi)

Appellant : Mahindra and Mahindra Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This case came up for hearing on the 23rd of December, 1982 and today i.e., on 21-4-1983.
2. This is a revision application to the Central Government (now transferred to the Appellate Tribunal under section 35 P of the Central Excises and Salt Act, 1944) against the order-in-appeal No. 644/79, dated 4-7-1979 passed by the Appellate Collector of Central Excise and Customs, Bombay.
3. The appeal relates to the metal name plates manufactured by M/s Excel Process Pvt. Ltd., Bombay. This company supplied the said name plates to another company viz. M/s Mahindra & Mahindra Ltd. The claim of the manufacturers i.e. M/s Excel Process Pvt. Ltd. before the Assistant Collector of Central Excise had been that the name plates manufactured by them were parts/accessories of Motor Vehicles and as such they were liable to be classified under Tariff Item 34A C.E.T. and that by virtue of notification No. 99/71-C.E. dated 29-5-1971 were exempt from the payment of the whole of duty of excise leviable thereon. The claim of the appellants was rejected by the Assistant Collector of

Central Excise, Bombay Division No. III, vide his Order No. CL-PL/34 A/Expro/77/13286 dated 19-10-1978 wherein he held that the goods fell under Tariff Item No. 68. Aggrieved by his order, the manufacturers, namely, M/s Excel Process Pvt. Ltd., went in appeal before the Appellate Collector of Central Excise and Customs, Bombay on the ground that the Assistant Collector had not allowed the goods to be classified under Tariff Item No. 34A as, in his view, those items did not form a part of motor vehicles. The Assistant Collector had come to his finding on the ground that the name plates in question had no functional utility and a motor vehicle could be considered complete without them. The Appellate Collector of Central Excise and Customs agreed with the Assistant Collector and held that the classification of those items under Item No. 68 was correct. Against his order, the other company, namely, M/s Mahindra & Mahindra Ltd. to whom the manufacturers i.e. M/s Axel Process Pvt. Ltd. had supplied the name plates, filed a revision application to the Central Government. That application is before us as appeal.

4. Shri Panwar, on behalf of the respondent, raised a preliminary point to the effect that M/s Mahindra & Mahindra Ltd. had no locus standi to file the revision application in their own right.

5. Shri C.M. Korde, advocate, on behalf of M/s Mahindra & Mahindra Ltd. stated that he had the locus standi to file the revision application under section 36 of the Act as it stood at the relevant time and argued on the point as follows : The applicants, namely, M/s. Mahindra & Mahindra Ltd., are merely pursuing the stand taken by the manufacturers, namely, M/s Excel Process Pvt. Ltd. by filing a revision application. Section 36 of the Central Excises and Salt Act, 1944 as it stood at the relevant time provides that the Central Government may on the application of any person aggrieved by any decision or order passed under the Act or the rules made thereunder by any Central Excise Officer or by the Central Board of Excise and Customs and from which no appeal lies, reverse or modify any decision or order (vide sub-section 1 of that section). Further, the Central Government may, of its own motion or otherwise, call for and examine the record of any proceedings in which any decision or order had been passed under section 35 or section 35A of the Act for the purpose of satisfying itself as to the

correctness, legality and propriety of such decision or order and may pass such order thereon as it thinks fit. Thus the power of revision can be exercised on the application of any person aggrieved. As the term 'person aggrieved' has not been defined in the Act or the rules, the said term should be understood in its normal meaning and in the context of the Central Excise Act. As the Central Excise is an indirect tax, the burden of the said tax is ultimately borne not by the manufacturers, but, by the consumers. In the instant case, though the goods were manufactured by M/s Excel Process Pvt. Ltd. ultimately the excise duty was to be borne by the applicants, namely, M/s Mahindra & Mahindra Ltd. If it is held that the goods in issue, namely, metal name plates are liable to excise duty, the burden of the said duty would fall entirely on the applicants, namely, M/s Mahindra & Mahindra Ltd. and if held otherwise, the benefit also would accrue to them. If the applicant has a particular or special interest, but not a general or theoretical or academic interest, in the subject matter as had been held in the case of *Thiruvangadam v. Muthu Chettiar* A.I.R. 1970 Madras p. 34, he could be treated as an aggrieved person. In the present case, since the applicants are the party really affected by the order sought to be challenged, they should be treated as aggrieved persons. Further, there is nothing in the scheme of the Act to suggest that the term "person aggrieved" is to be read as being restricted to the manufacturer or the assessee or the person against whom the order is passed. The Hon'ble Supreme Court in its judgment in the case of *Bar Council of Maharashtra v. Dabholkar* reported in A.I.R. 1975, S.C. 2092 had considered the meaning of the term "person aggrieved" and held that that term should be interpreted with reference to the purpose and provisions of the statute. The applicants also rely on another judgment of the Hon'ble Supreme Court in the case of *Maharak Singh v. State of U.P.* (AIR 1976 SC 2602). In case it is held that the present applicants have no locus standi to file a revision application/appeal against the order of the Appellate Collector of Central Excise and Customs, it would result in an anomalous position to the effect that the applicants would have locus standi to file a writ petition under Article 226 of the Constitution of India challenging the order of the Appellate Collector but they do not enjoy locus standi to file revision application/appeal before the Government or as the case may be, the Appellate Tribunal. In view of the decision of the Supreme Court in the *Bombay Ammonia*

Private Ltd. v. The State of Tamil Nadu (A.I.R. 1976 S.C. 2136), where the powers of the Government to revise suo motu which were held as plenary powers, the matter should be examined suo motu.

6. In reply to the arguments of the learned advocate Shri Korde, the Departmental Representative, Shri Derashri read out the definition of the term "aggrieved person" from Law Lexicon by T.P. Mukherjee (Vol. I, 1982 page 77-78) and in view of that he reiterated that the applicants had no locus standi to file the revision application.

7. We have followed the arguments of Shri Korde carefully and also the definition contained in the Law Lexicon referred to above. For ready reference, the relevant portions of the said definition are reproduced below : "AGGRIEVED PERSON : An aggrieved party is one who is injuriously affected by the judgment or whose rights are directly affected by the operation of the same The well known judgment which laid down the definition of the phrase "aggrieved person" is by James, L.J. in Re : Sidebotham: Ex. P. Sidebotham (1880) 14 Ch. D. 458. It was observed that the words 'person aggrieved' in Section 71 of the Bankruptcy Act of 1869 meant : "Not really a person who is disappointed of a benefit which he might have received if some order had been made. A 'person aggrieved' must be a man who had suffered a legal grievance, a man against whom a decision has been pronounced which had wrongfully deprived him of something, or wrongfully refused him of something or wrongfully affected his title of something." The important thing which may be noted in this definition is that the person filing an appeal must have "legal grievance" against the decision which "wrongfully deprives him of something or affects his title to something". This definition was, however, subsequently treated as not exhaustive. Corpus Juris Secundum, Volume IV, page 356, I Edition, dealing with the same observed as follows: "Broadly speaking a party or person is aggrieved by a decision when, only when it operates directly and injuriously upon his personal, pecuniary or proprietary rights."In Adi Pherorzshah Gandhi v. H.M. Seervai, (A.I.R. 1971 S.C. 385), the Supreme Court was also required to consider the scope and ambit of the word "person aggrieved" used in Section 37 of the Advocates Act, 1961 Dealing with the expression "any person aggrieved" used in Section 37 of the Advocates Act, 1961, the Supreme Court considered a number

of English authorities...and observed in paragraph 12 as under : "From these cases it is apparent that any person who feels disappointed with the result of the case is not a "person aggrieved". He must be disappointed of a benefit which he would have received if the order had gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something. It is no doubt a legal grievance and not a grievance about material matters but his legal grievance must be a tendency to injure him".

It is evident from the above that to qualify as an aggrieved person, a person must have a legal grievance but not just a grievance about material matters and further such grievance should wrongfully refuse him something or affect his title to something. Further, it is also evident from the decision given by the Hon'ble Supreme Court in the case Bar Council of Maharashtra v. Dablwkar referred to above by the advocate of M/s Mahindra & Mahindra Ltd. that the term aggrieved person should be interpreted with regard to the purpose and provisions of the statute. The purpose of the Central Excises and Salt Act, 1944 is to consolidate and amend the law relating to central excise duties on goods manufactured or produced in India and to Salt. Under section 3 read with section 2(f) of the Act, the duty of excise is leviable on the manufacture and production of goods as specified in the first schedule to the Act ; hence durability of a product for the purpose of excise will depend upon whether the goods have been manufactured or produced or not. Thus the excise duty is leviable only on the event of manufacture or production but not on their supply to the purchasers.

The liability to pay the excise duty is on the manufacturer or producer of goods and it cannot be recovered from his purchaser. There is, however, a procedure under which non-duty paid goods are allowed to be warehoused or transferred in bond for specified industrial use.

However, this is not the issue before us. In the instant case, the manufacturers of metal name plates were M/s Excel Process Pvt. Ltd. and being aggrieved by the assessment of the excise duty, they had filed their claim before the Assistant Collector as well as the Appellate Collector. For reasons known to them, they had not preferred any revision application before the government nor the government

felt the necessity to look into the matter suo motu. At the stage of revision application, suddenly M/s Mahindra & Mahindra Ltd. came into the picture and filed an application for revision of the Appellate Collector's order. As M/s Mahindra & Mahindra Ltd. are only the purchasers of the metal name plates and not being the manufacturers of the said metal name plates and as the excise duty is leviable only on the manufacturer or the producer, the aggrieved person would only be M/s Excel Process Pvt. Ltd. As has been stated by the advocate of M/s Mahindra & Mahindra Ltd. excise duty being an indirect tax, the ultimate burden would be on the consumer but that does not mean that every consumer of the goods in issue can be treated as an aggrieved person for filing his claim either before the Central Excise authorities or the government or, as the case may be, the Tribunal. In any case, M/s Mahindra & Mahindra are not the affected consumers in this case. They are only an intermediary. Whatever tax they pay in the form of higher price of the name plates, they pass on to their customers of motor vehicles. In view of the purposes and the provisions of the Act, we hold that in this case, the aggrieved persons are the manufacturers, namely, M/s Excel Process Pvt. Ltd. and as such M/s Mahindra & Mahindra Ltd., the purchasers of the said goods have no locus standi to file a revision application/appeal. The question of going into the merits of the disputed classification does not, therefore, arise in these proceedings. The appeal is dismissed accordingly.

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