

**Network Limited Vs. Collector of Central Excise**

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**Court :** Delhi

**Decided On :** Oct-04-1994

**Reported in :** 58(1995)DLT144; 1997(91)ELT303(Del)

**Judge :** Cyriac Joseph and; D.P. Wadhwa, JJ.

**Acts :** [Central Excise Tariff Act, 1985](#)

**Appeal No. :** Civil Writ Petition No. 4093 of 1994 & C.M. No. 7422 of 1994

**Appellant :** Network Limited

**Respondent :** Collector of Central Excise

**Advocate for Pet/Ap. :** Shri Ravinder Narain and ;Ashok Sagar, Adv.

**Judgement :**

**D.P. Wadhwa, J.**

1. This petition under Article 226 of the Constitution is directed against the order dated 4 July, 1994 of the three members Bench of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, (for short 'CEGAT') directing the petitioner to deposit a sum of rupees one crore towards central excise duty within eight weeks of the receipt of the order and at the same time staying the balance duty amount and the penalty-till the disposal of the appeal. This order was passed on an application by the petitioner under Section 35F of the Central Excises and Salt

Act, 1944, (for short 'the Act') pending appeal filed against the order dated 28 October, 1993 of the Collector of Central Excise, Meerut.

2. The petitioner, a public limited company, is engaged in the manufacture of electronic typewriters which item during relevant period (1982-85) was classifiable under Item 33D of the First Schedule to the Act. The Collector by his order confirmed the demand of Rs. 1,16,85,378/- and imposed a penalty of Rs. 20 lakhs on the petitioner. CEGAT had pointed out that the matter related to the period 1982-85 and had passed through different stages of adjudication, remands, re-adjudication, etc., including Courts orders, and further noted that in his adjudication order the Collector came to the following conclusion :-

(1) M/s. Network Limited were charging lump-sum amount, but for central excise purposes they were making two sets of invoices bifurcating the technical service charges and standard accessories with intention to evade the payment of duty and that they had resorted to willful miss-declaration on different counts as elaborated in the show cause notice.

(2) There was sufficient evidence to support the fact that their accessories were essential components of their electronic typewriter and as such the cost thereof was includible in the assessable value.

(3) The decision of the Tribunal dated 3-3-1989 being given in relation to price list filed from 11-6-1986 was not relevant for the period prior to 11-6-1986, when the pattern of sale/price lists was not the same.

(4) In terms of the Delhi High Court decision in the case of Duncans Agro Industries Ltd. v. UOI, the demands can be raised under Section 11A of the Act even when the assessments are provisional.

(5) The amounts recovered through separate invoices under the heading Technical Service Charges were part and parcel of sale price and where includible in the assessable value and collection of extra charges in the invoices under the garb of technical service charges, etc., was nothing but a method to recover a part of the sale proceeds from their customer without subjecting such proceeds to

appropriate assessment and payment of Central Excise Duty.

(6) The charge of suppression of production and its removal is established against the appellants.

3. CEGAT examined various grounds urged by the petitioner in support of the application seeking stay of deposit of the duty and penalty pending appeal. The petitioner had said that the Collector who adjudicated the matter was not competent to do so as when he passed the impugned order he was no more Collector Judicial; the assessments were provisional and there was no legal basis for raising demand and that the demand could not be made before finalisation of the provisional assessments; sales of the petitioner were in retail and petitioner had in fact paid higher central excise duty without claiming permissible deductions and in this connection reference was made to an earlier decision of the CEGAT in the case of the petitioners itself 1989 (41) E.L.T. 643 (Tri); as regards the bought out parts, their value should not have been included in the value of the typewriters, and if these were essential parts then the typewriter was not complete without them, and if these were not essential parts then their value could not be included in the value of the typewriter; it was not a case of imposing penalty as the assessment had not been finalised; and that the fact that the petitioner had paid more duty was neither considered nor dealt with by the Collector. The CEGAT also noticed that on the financial aspect it was stated that the petitioner was a profit making company. All these points raised were examined quite in depth by the CEGAT and it came to the conclusion that the petitioner did not have a prima facie case, and that the revenue it appeared had a good case on merits. The CEGAT did not make any detailed observations in the matter it being 'sub-judicial' but noticed that the matter involved not only the cost of the bought out items, but certain service charges also, and that each and every component making the demand had to be gone into carefully which was only possible at the stage of final hearing of the case. Then the CEGAT made the following operative order :-

'We are thus of the view that if the appellants are desired to deposit the full duty amount demanded and the full penalty amount levied, then it may cause undue hardship. In the interest of justice and taking all the relevant considerations into

account we direct the appellants to deposit a sum of Rs. One Crore (Rupees one crore only) within 8 weeks of the receipt of this order, and on depositing the said amount of Rs. One Crore the balance duty amount and the penalty amounts will be stayed till the disposal of the appeal. If the appellants fail to deposit the above sum within the time as stipulated above then this stay order shall be automatically vacated and the appeal shall also be liable for dismissal without any further reference to them.'

4. The impugned order dated 4 July, 1994 of the CEGAT was stated to have been received by the petitioner on 4 August, 1994 and the present petition was filed on 24 September, 1994 when time to deposit the duty as directed by the CEGAT was to expire of 27 September, 1994. In *Shri Vijay Prakash D. Mehta v. Collector of Customs (Preventive) Bombay* : [1989]175ITR540(SC) , the Court held that right to appeal was neither an absolute right nor an ingredient of natural justice and that right to appeal was statutory right and it could be circumscribed by the condition in the grant of the right, and that if a statute gave a right of appeal upon certain conditions, it was upon fulfillment of those conditions that the right became vested and exercisable to the appellant. Section 35F of the Act, in relevant parts, prescribes that the person desirous of appeal against an order demanding duty and penalty shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied. This section is in absolute terms and no appeal is maintainable unless the duty demanded or penalty levied is deposited. However, under the Proviso to this section, it is left to the discretion of the CEGAT when it is of the opinion that the deposit of any duty demanded or penalty levied would cause undue hardship to such a person that the CEGAT might dispense with such deposit subject to such conditions as it might deem fit to impose as to safeguard the interest of the revenue. A question that arises for consideration is, whether the CEGAT exercised its discretion in a judicial manner by requiring the petitioner to deposit Rs. One Crore as a pre-condition for its appeal to be heard. Mr. Ravinder Narain, learned Counsel for the petitioner, raised same question as were urged by him before the CEGAT. Arguments proceeded on the basis is as if we were hearing appeal against the order of the CEGAT. He said the CEGAT wrongly came to the conclusion that the petitioner did not have a prima facie case. That cannot be scope of the writ jurisdiction. We have not been shown any

jurisdictional error when has crept in the impugned order for us to interfere. Mr. Ravinder Narain submitted that the CEGAT fell into error when it misread the earlier order of the CEGAT, or applied a judgment : 1989(39)ELT511(Del) wrongly to the facts of the present case. He said, he had submitted a chart before the CEGAT giving various calculations even on the assumption that whatever the authority said was correct the petitioner was rather entitled to refund of the excess duty paid amounting to Rs. 0.57 Crore. May be the CEGAT has not specifically referred to this chart, but the documents on the basis of which the chart was prepared had been duly considered by the CEGAT. We do not find any ground in the present case for us to interfere. We would, therefore, dismiss the petition.

5. In one of the cases recently decided by us we had criticised the conduct of the petitioner in that case in coming to the Court almost a day or so before the time granted by the CEGAT was to expire. In the present case also there appears to be no reason why the petitioner could not have filed the petition earlier immediately after the impugned order was made, and why it should come to us when only three days were left for the period to expire. However, since the time has already expired and we are pronouncing our order today, we will give four days time more to the petitioner for it to comply with the order of the CEGAT.

6. Petition allowed.

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