Bharat Berg Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-05-1994

Reported in : (1994)(73)ELT417TriDel

Appellant : Bharat Berg Ltd.

Respondent : Collector of Central Excise

Judgement :

1. M/s. Bharat Berg Limited, Malwan, Distt. Fatehpur (UP) - Pin 212664 has filed an appeal being aggrieved from the order passed by the Collector of Central Excise (Appeals), Allahabad. The said appeal was presented in the registry on 5-5-1994. Simultaneously, a stay application duly supported with an affidavit duly sworn before the Oath Commissioner has also been filed in support of his stay application.

The stay application was taken up for hearing. Shri V. Sridharan, learned Advocate pleaded that there is denial of principles of natural justice. The appellant had filed appeal before Collector (Appeals). He fairly stated that no stay application was filed. Later on, there was a communication from the Collector and in response to the communication from the Collector, the appellant had written a letter to the Collector (Appeals) for making a request for short adjournment and in that letter, it was duly mentioned that the stay application will be filed at the time of the hearing of the appeal. He pleaded that Collector (Appeals) had rejected the appeal for non-compliance of Section 35F. He pleaded that in case the Collector (Appeals) had any intention not agreeing to the request of the appellants, he should have issued a notice to the appellant for his ground for dismissing the appeal for non compliance of Section 35F. In support of his argument, he cited a decision of the Tribunal in the case of Premnath Mongia Foods & Beverages Pvt. Ltd. v. C.C.E., reported in 1993 (63) E.L.T. 245 (Tribunal). He pleaded that either the pre-deposit may be dispensed with or the matter may be remanded to the Collector (Appeals). Shri Siddharth Kak, learned Jt. C.D.R., who has appeared on behalf of the respondent fairly agreeing with the view of the learned Advocate, Shri V. Sridharan stated that before the hearing of the appeal by the Collector (Appeals), the Collector (Appeals) should pass an order on the stay application first and dispose it of on merits and thereafter he may hear the appeal in accordance with law and in case the appellant does not choose to file a stay application before Collector (Appeals), then the Collector (Appeals) should straightaway dismiss the appeal.

2. We have heard both sides and have gone through the facts and circumstances of the case. The facts are not disputed. The appellant did make a prayer for adjournment and in that application it was duly mentioned that he will file the stay application on the date of hearing. The appellant's letter appears on page 60 of the paper book and the Collector (Appeals) in his order has mentioned about the same in para 3. The appellant's letter on page 60 is reproduced below :- "With reference to above subject, it is submitted that a personal hearing was fixed on 22-2-1994 before your goodself in above matter.

In this regard, it is requested that undersigned, Authorised Signatory, will be at my native place (Ajmer) to attend to the marriage of my Brother in law.

It is, therefore, requested to fix personal hearing in the 1st week of March 1994.

At the time of personal hearing we shall submit stay application also.

Collector (Appeals)' observation on page 64 of the paper book in Para 3 are also reproduced below :- "3. I have carefully considered the points contained in the Memorandum of Appeal. The appellants had not filed any stay application alongwith the Memorandum of Appeal. They were, therefore, requested vide this office letter C. No. 5-CE/APPL/ALLD/94/323 dated 27-1-1994 to submit the proof of payment of duty or a stay application as well as Court fee stamp of Rs. 3/-.

They were also given a chance of Personal Hearing on 22-2-1994.

However, none appeared for personal hearing on 22-2-1994. A letter dated 15-2-1994 has been received in this office from one Shri N.L.

Joshi, claiming himself to be an authorised signatory of the appellants, that he would be at Ajmer in connection with some marriage on 22-2-1994, and hence the date of hearing should be postponed. He has also said that he would submit a stay application at the time of next hearing. Nothing has been mentioned about the short-paid Court Fee Stamp Rs. 3/-." A perusal of the above shows that the Collector (Appeals) had dismissed the appeal for non compliance of Section 35F. It is also an admitted fact that no stay application was filed before Collector (Appeals). In fact, in terms of Section 35F of the Central Excises and Salt Act, 1944, the appellant should have filed the stay application alongwith the appeal. Since it was not done, the Collector (Appeals) should have granted an opportunity to the appellant to rectify the defect and he should have given time when the appellant seek for extension of time during the course of hearing. No notice before the dismissal has been issued. In these circumstances, we set aside the impugned order and remand the matter to the Collector of Central Excise (Appeals) having jurisdiction. Ld. Jt. CDR has no objection for remand of the matter.

Collector (Appeals) before disposing of the appeal shall hear the stay application and dispose of the same on merits in accordance with law.

In case the appellant still choose not to file a stay application before the Collector (Appeals), it will be open to Collector (Appeals) to dismiss the appeal for non compliance of Section 35F. It is, further, directed that the appellant should file the stay application if they so choose within 6 weeks from today. In the result, the stay application is disposed of and the appeal is also allowed by way of remand.