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Jaypee Forge Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-27-1994

Reported in : (1994)(74)ELT618TriDel

Appellant : Jaypee Forge Ltd.

Respondent : Collector of Central Excise

Judgement :

1. Jaypee Forge Ltd., C-19/5, MIDC Taloja District Raigad has filed an appeal being aggrieved from the order passed by the Collector of Central Excise (Appeals), Bombay. A stay application-cum-early hearing application was also filed. Shri Gautam B. Doshi, the learned Chartered Accountant with Shri Jitender Singh, the learned advocate has appeared on behalf of the appellant. Shri Doshi, the learned Chartered Accountant pleaded that the order as to the creation of demand dated 6th April, 1994 is itself an appealable order to the Collector of Central Excise (Appeals) and the appellant has duly filed an appeal before the Collector of Central Excise (Appeals) as well as an application for stay and the present stay application before the 'Tribunal is not maintainable. He makes a prayer for grant of permission for the withdrawal of the prayer for the grant stay, but for out of turn hearing he pleaded that since there is recurring effect and demands are being created from time to time and the appellant has to go in unnecessary litigation and to avoid multiplicity of proceedings, out of turn hearing may be granted. Shri K.K. Dutta, the learned JDR who is present on behalf of the respondent, has got no objection for permission for withdrawal of the prayer for

grant of stay. Shri Dutta opposes the appellant's prayer for grant of out of turn hearing.

2. We have heard both the sides and have gone through the facts and circumstances of the case. The impugned order before the Tribunal pertains to issue of classification by an order passed by the Asstt.

Collector which was subject matter of appeal before the Collector (Appeals). Collector (Appeals) had confirmed the findings of the Assistant Collector and had rejected the appeal. Being aggrieved from the order passed by the Collector (Appeals), the appellant is before us. We have perused the orders passed by the lower authorities. There is no quantification of the duty amounts neither in the order-in-original nor in the order passed by the Collector (Appeals) and the demand has been quantified vide order dated 4th April, 1994 by Shri A.K. Kaushil, Assistant Collector. The order passed by the Assistant Collector is appealable to the Collector (Appeals) and we are told by Shri Doshi, the learned Chartered Accountant that the appeal is pending before the Collector (Appeals) and the Tribunal has got nothing to do with the order passed by the Assistant Collector. The appeal to the Tribunal is to be filed by an aggrieved person in terms of provisions of Section 35B of the Central Excises and Salt Act, 1944.

Section 35B of the Central Excises & Salt Act, 1944 is reproduced below : (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order - (a) a decision or order passed by the Collector of Central Excise as an adjudicating authority; (c) an order passed by the Central Board of Excise and Customs, constituted under the Central Board of Revenue Act, 1963 (hereinafter in this Chapter referred to as the Board) or the Appellate Collector of Central Excise under Section 35, as it stood immediately before the appointed day; (d) an order passed by the Board or the Collector of Central Excise, either before or after the appointed day, under Section 35A, as it stood immediately before that day." A perusal of the same shows that where an order has been passed by the authorities mentioned in the section, appeal lies to the Tribunal. The order passed by the Assistant Collector is appealable to the Collector (Appeals). So, in these circumstances, we accept the prayer of the

appellants' learned Chartered Accountant, Shri Doshi for the grant of permission for withdrawal of the prayer for grant of stay application to which Shri Dutta has got no objection. The stay application is dismissed as withdrawn.

3. Now coming to the appellant's prayer for out of turn hearing, the appellant with his petition dated 19th September, 1994 has attached the detention memo and there are recovery proceedings. We are told by Shri Doshi that there is recurring effect and demand of Rs. 1,24,00,... has been created so far and show cause notice has already been issued. Shri Doshi pleaded that to avoid multiplicity of the proceedings, out of turn hearing may be granted as demand has got nothing to do with the proceedings pending before the Tribunal. Shri Doshi has opposed the grant of out of turn hearing. As observed above, there is no demand in the present order. There is recurring effect on the future clearances and show cause notices are being issued from time to time. In order to avoid multiplicity of the proceedings, we are of the view that it is a fit case where out of turn hearing may be granted. Accordingly, we accept the prayer of the appellant for out of turn hearing. The matter to come up for hearing on 6th February, 1995.

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