

**Quality Flavours Export Vs. Commissioner of Central Excise, Meerut**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** May-21-2012

**Judge :** The Honourable Ms. Archana Wadhwa, Member (Judicial)

**Appeal No. :** Excise Appeal Nos.329, 330 of 2012-SM, Excise Stay Application Nos.337, 338 of 2012-SM

**Appellant :** Quality Flavours Export

**Respondent :** Commissioner of Central Excise, Meerut

**Advocate for Pet/Ap. :** For the Appellants: S.C. Dabral, Chartered Accountant Advocate. For the Respondent: Bharat Bhushan, AR.

**Judgement :**

**Per Archana Wadhwa, J.**

1. After dispensing with the condition of pre-deposit of duty and penalties, I proceed to decide both the appeals inasmuch as I find that the orders passed by the original adjudicating authority are in violation of principles of natural justice. At this stage, learned advocate submits that third appeal in the case of Avtar Mint arising out of the same impugned order may also be taken up for final disposal as connected appeal. He clarifies that said appeal is not on board inasmuch as there was no such listing in the present cause list.

2. Learned AR has no objection to the above proposal.

3. It is seen that the appellants were issued a show cause notice answerable to Additional Commissioner Central Excise, Meerut II. However, same show cause notice called upon Shri R.K. Gupta, Manager of M/s. Quality Flavours Export to show cause to Asstt. Commissioner Moradabad. Thereafter a corrigendum was issued on 31.5.10, amending the same and calling upon M/s. Quality Flavours Export to show cause to Asstt. Commissioner Moradabad.

4. Learned Advocate submits that ultimately the case was decided by the Deputy Commissioner (Tech) Central Excise, Meerut. The appellants have filed an interim reply before Assistant Commissioner, Central Excise Moradabad for extension of time to file a detailed reply. Similarly, personal hearing fixed by Asstt. Commissioner, Central Excise Moradabad were sought adjournment on the ground of advocate being hospitalised. However, learned advocate submits that subsequently, they received orders from Deputy Commissioner (Technical), Meerut II. Before passing said order, no personal hearing was afforded to him.

5. After hearing learned AR and after going through the impugned order passed by Deputy Commissioner (Techn), Meerut II, I find that it stands recorded in the said order as under:-

“The party did not submit their defence reply to the aforesaid show cause notice. They were asked by the Supdt.(Adj), Central Excise Division Moradabad vide letter C.No. 24-Prev./QEF/MBD/09/10857-58 dated 25.11.2010 to appear for personal hearing on 14.12.10, 15.12.10 and 16.12.10 before the Deputy Commissioner, Central Excise Moradabad, to represent their case and file their written defence reply in the case, but they did not appear for personal hearing on the date and time fixed for the purpose. However, in response to aforesaid, they vide their letter dated 14.12.2010 addressed to the Deputy Commissioner, Central Excise Division Moradabad stated that they are in process of collecting some vital documents and are also in process of collecting various documents for submission of reply and require more time to collect the required documents from various sources as the matter needs time and hope to collect the same within one month from today. They requested to allow one month's time for submission of the reply and personal hearing. Accordingly, another date for personal hearing

was fixed on 14.01.2011 vide letter even No. 65-66 dated 4.1.2011, to file defence reply in the matter and present their case before the adjudicating authority. However, neither they appeared for personal hearing on the date and time fixed nor did they file their defence reply. In view of facts of the case, I have no option but to decide the case ex-parte on the basis of facts available on record.”

6. As is seen from the above all dates of hearings were fixed before Deputy Commissioner, Central Excise, Meerut. As regards, the date of hearing fixed on 14.1.11, it is not clear whether the same was before Deputy Commissioner, Central Excise Moradabad or Deputy Commissioner Meerut. Learned Advocate submits that they did not receive any notice of hearing for 14.1.2011.

7. It seems to be a case where the proposals, as regards the adjudicating authority, in the show cause notice were different and subsequently kept on varying. Though the corrigendum removing the defect in the show cause notice was issued, but it does not seem that any corrigendum was subsequently issued on record to change the adjudicating authority. Earlier the matter was being handled by Deputy Commissioner Moradabad, all the date of hearings were fixed before him. However when the matter was shifted the Deputy Commissioner (Tech), Meerut II, is not clear from the records. Though sometime was given to the Departmental representative to find out the facts, learned DR appearing for the Revenue submits that the correspondence entered into with the Department has not referred to queries raised by the Bench. In any case, I find that the impugned order stand passed without their being any detailed reply by the appellant and without any effective opportunity of personal hearing. As such, the impugned orders are set aside on this short ground itself and the matter remanded to the APPROPRIATE adjudicating authority for fresh decision. Revenue would intimate the proper officer before whom the show cause notice is answerable by the appellant. 8. Stay petitions as also appeals get disposed of in the above manner.