Nulon India Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-01-1996

Reported in : (1996)(87)ELT88TriDel

Appellant : Nulon India Ltd.

Respondent : Collector of Central Excise

Judgement :

1. When the matter was called on 2-7-1996, it was brought to the notice of the Bench that Shri Randhir Singh, Advocate for the appellants had filed an application seeking directions from the Tribunal, stating that the appellants had engaged another Counsel without any intimation to him and without filing any "no objection certificate" from him, and that he was prepared to furnish no objection certificate if substantial outstanding dues were paid to him. The appellants had filed a detailed reply denying that any amount was due to Shri Randir Singh, submit-ting that they had informed him that they had engaged another Counsel to argue the appeal on 27-6-1996 which was the date fixed for hearing of the appeal (and adjourned to 2-7-1996). Shri C.P. Vig, advocate appearing along with Shri Sukumar Mukhopadhyay, Consultant, appeared before the Bench on 2-7-1996 and sought reference of the demand of Shri Randhir Singh for exhor-bitant fees, to the Bar Council.

It is in this background that the Bench directed Shri Randhir Singh and Shri J.S. Sinha, Advocates to appear on 30-7-1996 and to explain as to why the matter should not be referred for taking necessary action under the Advocates Act, 1961.

A rejoinder was filed by Shri Randhir Singh and Shri J.S. Sinha on 22-7-1996 setting out the details of payment of fees and contending that the fee earlier paid was for representation before the adjudicating authority i.e. the Commissioner of Central Excise, Meerut and that the bills dated 24-1-1996 and 27-6-1996 were for fees, etc. for appearance before this Tribunal.

2. The matter came up on 30-7-1996 and lay over to 31-7-1996. Our attention has been drawn by both sides to Section 35 and Section 49 of the Advocates Act, Rule 39 of the Bar Council of India Rules and Section 35Q(5)(a) of the CESA, 1944. Shri Vig submits that the demand for exhorbitant fees by Shri Randhir Singh and Shri J.S. Sinha amounts to misconduct and it is within the purview of the Tribunal to refer the misconduct of the advocates to the Bar Council. He also submits that delaying tactics are being adopted by the counsel which would result in failure of the hearing of the appeal, thus holding up relief to the appellants, if granted by the Tribunal in the appeal.

3. We have gone through the relevant provisions of various Statutes above mentioned. We do not wish to be drawn into the controversy as to whether any fees were owing from the appellants to Shri J.S. Sinha and Shri Randhir Singh. This is a matter which, in our opinion, is to be sorted out between the appellants and the Counsel without recourse to the Tribunal. It is open to the appellants to take action available to them under the law, if so advised. We are confining ourselves to Rule 39 of the Bar Council of India Rules, framed under Section 49(1)(c) of the Advocates Act, 1961 read with proviso thereto. This Rule provides that an Advocate shall not enter appearance in any case in which there is already a [vakalatnama] or memo of appearance filed by an Advocate engaged for a party except with his consent; in case such consent is not produced he shall apply to the Court stating reasons why the said consent should not be produced and he shall appear only after obtaining the permission of the Court. In the circumstances set out in the preceding paragraphs and having regard to the fact that the appeal [involves] substantial stakes (duty amount involved is Rs. 32,91,738/-, RF 1,94,700/- and penalty of Rs. 2 lakhs), we, in the interests of justice, permits Shri C.P. Vig and Sukumar Mukhopadhyay to appear in the above appeal instead of the previous Counsel. The appeal is fixed for hearing on 30-9-1996.