

Collector of C. Ex. Vs. Air Conditioning Corpn. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-01-1984

Reported in : (1985)LC156Tri(Delhi)

Appellant : Collector of C. Ex.

Respondent : Air Conditioning Corpn. Ltd.

Judgement :

1. This is a Reference Application signed by the Assistant Collector of Central Excise, Calcutta (claiming to be authorised by the Collector of Central Excise, Calcutta to file the application on his behalf), in respect of order No. 160-B/84 dated 1-2-1984 [1985 (19) E.L.T. 206 (Tri.)]. Shri R.R. Gupta, Advocate for the respondent raised the following preliminary points and requested that the reference application be dismissed in limine.

(1) The application is late by 27 days and no sufficient cause has been shown for such delay. (2) The Collector of Central Excise has not signed the application as required under Section 35G(1) of the Central Excises and Salt Act, 1944. Instead he has authorised the Assistant Collector under Section 35B(2) to do so. The said Section 35B(2) applies to appeals filed before the Appellate Tribunal and does not cover Reference Applications. (3) The issue involved in the said order relates to rate of duty inasmuch as the question before the Bench was regarding assessment of blade assemblies fitted with cooling towers.

The adjournment had already been granted once on 3-7-1984 at the request of the departmental representative. When the case came up for hearing today the D.R. again sought further adjournment since he had not been able to get any reply from the Collector of Central Excise, Calcutta. Since the matter was already delayed and sufficient time had already been granted to the department, the request for further adjournment was rejected. Shri Kunhikrishnan thereupon argued and while offering comments on the points raised by the respondent, he admitted that there is no provision for delegation of powers by the Collector of Central Excise in the matter of filing of reference applications under Section 35G(1) of the Central Excises and Salt Act, 1944 to Assistant Collector of Central Excise. Similarly he was not able to explain the delay of 27 days in filing this reference application apart from the reasons already given and application form furnished by the Assistant Collector. It has been stated that it was necessary to consult the Law Ministry, Central Board of Excise and Customs regarding the case files.

It was, therefore, not possible to file the application within the prescribed time. The Bench observed that the Collector of Central Excise had passed orders for filing the application on 28-4-1984 but the Assistant Collector of Central Excise, Calcutta

actually filed the application on 18-5-1984 which was received in the Registry on 24-5-1984. No explanation for this delay has been offered either by the Assistant Collector of Central Excise or Collector or on his behalf.

Shri Kunhikrishnan stated that in similar cases, the Tribunal has heard, if such an order has a relation to the rate of duty, even though the order itself may have been based on any preliminary point like time bar. In such cases, the Tribunal is deemed to have dealt with all the relevant points raised before it in the case. Shri R.R. Gupta also cited the case of Commissioner of Income Tax v. Scindia Steam Navigation Co. reported in AIR 1961 (Supreme Court) 1633 and the case of M/s. Jute Co. Ltd., C Icutta v. Collector of Central Excise, Calcutta reported in 1984 (16) E.L.T. 640. In the light of these decisions, the Bench consider that the reference application is misconceived and is rejected.

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