
(1999) 08 DEL CK 0097

In the Delhi High Court

Case No : C.W. No's. 450, 451 and 458 of 1999

Faridabad Forgings Pvt. Limited

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision : 17-08-1999

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (1999) 5 AD 681 : (1999) 81 DLT 383 : (1999) 51 DRJ 29 : (1999) 66 ECC 106

Hon'ble Judges : D.K. Jain, J;Arun Kumar, J

Bench : Division Bench

Advocate : Mr. Y.K. Kumar, for the Appellant; Mr. Jayant Bhushan, for the Respondent

Judgement

Arun Kumar J.

1. The above writ petitions raise a common question of law and fact. This common order will, Therefore, dispose of all the three petitions. The petitioner has challenged an order dated 23/24th December, 1998 passed by the Commissioner, Central Excise (Appeals). The impugned order has been passed by the Commissioner u/s 35F of the Central Excise Act, 1944 on an application filed by the petitioner praying for waiver of predeposit. The application was filed along with appeal against the order of the Assessing Authority imposing duty and penalty on the petitioner. By the impugned order, the Commissioner has disposed of similar applications for waiver of pre-deposit in 32 appeals filed by different parties, having different facts and different grounds for seeking waiver of pre-deposit. The order does not contain any reasons nor does it disclose any basis whatsoever for the decision contained therein. As per the order the Commissioner has directed different parties to deposit different amounts by way of pre-deposit. However, there is nothing in the order to show how the conclusions about the varying amounts mentioned therein with respect to each party have been reached. According to the learned counsel for the petitioner this

shows that the order has been passed in a mechanical manner without any application of mind on the part of the officer concerned. Further it may be noted that the petitioner was never provided any opportunity of personal hearing before the impugned order was passed.

2. The learned counsel for the respondent submitted that there is no requirement of passing a reasoned order nor there is any requirement of providing a personal hearing in such matters and, Therefore, the order cannot be faulted on this account. We are unable to agree with the learned counsel. A personal hearing may not be sine qua non for such an order yet there should at least be something in the order to indicate that the authority has applied its mind to the facts of the particular case. The Commissioner has passed a common order disposing of 32 matters. There is no reference to facts of any case nor any of the parameters for waiver or otherwise of the requirement of pre-deposit have been mentioned much less discussed. It suggests total non-application of mind. We provided an opportunity to the respondent to produce the records to at least show from records that mind had been applied by the officer concerned before passing the order. The record has been produced. The counsel concedes that there is nothing in the record to show application of mind on the part of the officer in passing the order. We have perused the record. Unfortunately we find nothing in the record to suggest that the officer has considered the facts on record. There is nothing in the noting side of the file to indicate that the officer has considered the facts and thereafter passed the order. The file only contains a signed photo copy of the common order prepared for 32 cases. This copy is exactly similar to the one placed on our record by the petitioner. We are clearly of the view that the impugned order shows total non-application of mind on the part of the Commissioner, Central Excise (Appeals).

3. Secondly, the learned counsel for the respondent submitted that the fact that in different cases, different amounts had been fixed for deposit by way of pre-deposit, shows that mind had been applied by the officer concerned to facts of each case. We are unable to accept with this submission as well. As mentioned above there is nothing on record to support this argument. In keeping with the principles of natural justice and to uphold the principle that "justice should not only be done, but it should be seen to have been done", the least that the Commissioner could do was to pass individual orders pertaining to each case giving briefly his reasons for the conclusion.

4. The Commissioner (Appeals) while exercising power u/s 35F of the Central Excise Act, 1944 acts as a quasi-judicial authority and the statutory function which he has to discharge envisages that the orders should at least show that there has been some application of mind. This is an important statutory function which cannot be performed by the officers in such a mechanical and perfunctory manner. The power under the Section is coupled with a duty. The approach of the Commissioner (Appeals) in passing the impugned order has been totally cavalier and amounts to failure to discharge the statutory functions. It is also a case of

complete negation of the principles of natural justice. We are unable to sustain the impugned order. The same is hereby quashed. The matter is remanded to the Commissioner, Central Excise (Appeals) for fresh consideration and decision of the application of the petitioner u/s 35F of the Central Excise Act, 1994 in accordance with law.

5. The petition stands disposed of.