(1990) 07 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No. 2167 of 1990

Mahindra and Mahindra Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 23-07-1990

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (1992) 41 ECR 638 : (1990) 50 ELT 338

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Advocate : Shri C.N. Korde, instructed by Little and Co, for the Appellant; Shri S.M. Shah, for the Respondent

Judgement

Rule, returnable forthwith.

Shri Shah waives service on behalf of the respondents.

Heard counsel.

1. The grievance of the petitioners is that the Collector of Central Excise (Appeals), Bombay has disposed of the applications for stay of the order passed by the Assistant Collector of Central Excise during pendency of the appeal without giving them an opportunity of being heard. The petitioners also complain that consequently because of the failure to comply with the provisions of Section 35F of the Central Excises and Salt Act, 1944 the appeal was dismissed by the Collector of Central Excise (Appeals).

2. The Assistant Collector of Central Excise passed on order on December 29, 1989 against that petitioner confirming the demand amount of Rs. 67,928.53. The Assistant Collector had also passed another order confirming the demand of Rs. 53,650.96. In respect of these two orders the petitioners preferred appeal before the Collector of Central Excise (Appeals), Bombay. The petitioners also filed application for stay of the operation of the order pending the appeal. The petitioners claimed that they have very good prima facie case on merits, and

therefore, it would be just and convenient to grant stay of the payment of amount ordered by the Assistant Collector pending hearing and final disposal of the appeal. Both the stay applications were disposed of by the Collector of Central Excise (Appeals) without giving any hearing to the petitioner and holding that he was not satisfied that pre-deposit required u/s 35F of the Excise Act would cause undue hardship to the petitioner as to warrant a waiver of the same. As a consequence of the failure of the petitioner to deposit the amount confirmed by the Assistant Collector, the appeal in respect of demand of Rs. 67,928.53 was dismissed. The petitioners challenge the order declining stay and dismissal of one of the appeals.

3. Shri Korde, learned counsel appearing on behalf of the petitioners, is right in his submission that the Collector of Central Excise (Appeals) was in error in disposing of the stay application without giving any hearing to the petitioners. In the system which we have adopted, it is the principle of natural justice that no adverse order should be passed against any party without giving him a hearing. It was the consistent practice followed by the Collector of Central Excise (Appeals) for over several years and there was no reason why the present authority should have made departure from the same. It is not proper for the authority to merely read the stay application and pass order adverse against the petitioners. The authority should realise that an application for stay is a proceeding independent of the appeal filed against the order of the Assistant Collector. The Collector of Central Excise (Appeals) shall hear the parties when an application for stay is filed, and only after hearing the oral submissions should dispose of the stay application. The two orders passed by the Collector of Central Excise (Appeals) refusing to waive the pre-deposit required u/s 35-F of the Excise Act therefore can sustained. The consequential order dismissing one of the appeal also cannot be sustained. The proceedings are therefore required to the remitted back to the Collector of Central Excise (Appeals) with a direction that the authority shall give hearing to the petitioner in respect of two applications for stay in respect of two appeals preferred and thereafter pass appropriate orders.

4. Accordingly, petition succeeds and the two orders dated June 8, 1990 passed by the Collector of Central Excise (Appeals) on the stay applications filed by the petitioner in respect of two appeals are set aside and proceedings are remitted back to the Collector for fresh disposal of the two stay applications. The order dated June 29, 1990 dismissing an appeal for non-compliance of Section 35F of the Excise Act is also set aside.

5. There will be no order as to costs.