

2014 (1) ECS (33) (HC - CHG.)

In the High Court of Chhattisgarh at Bilaspur
Tax Case No.04 of 2011

UNION OF INDIA

Vs.

M/s SIDHI VINAYAK SPONGE IRON PVT. LTD.

Income Tax Appeal under Section 35G of Income Tax Act, 1961_

Appearance:

Shri Maneesh Sharma, counsel For the Appellant.

CORAM:

Hon'ble Shri Yatindra Singh, C.J.

Hon'ble Shri R.S. Sharma, J.

“There is no mandate that both the Commissioners should sign the authorisation on the same day. The relevant thing is that both the Commissioners must agree on the opinion that the order of the Commissioner (Appeals) is not legal and further appeal should be filed against the same. This was done in the present case. The appeal of the Department could not be dismissed by the Tribunal on the ground that both the Commissioners have not signed at one time.”(para 12)

JUDGEMENT

1. This is an appeal under section 35G of the Central Excise Act (the Act) against the order of the Custom, Excise, Service Tax Appellate Tribunal, Principal Bench, New Delhi (the Tribunal) dated 04.06.2010 dismissing the appeal of Central Excise Department (the Department) on the ground that there was no consent by both the Commissioners at one point of time for filing appeal.

THE FACTS

2. M/s Sidhi Vinayak Sponge Iron (P) Ltd (the Assessee) manufactures sponge iron. A search was conducted in the factory premises on 13.05.2006. It was found that there was 320.425 MT shortage of sponge iron and there was clandestine removal of the same. The Assessee paid duty in respect of this removal on 08.05.2006.
3. Subsequently, the Adjudicating Officer (the AO) issued notice on 26.09.2007 asking as to why the Education Cess along with the penalty and interest be not realised from the Assessee on the above clandestine removal.
4. The Assessee filed its reply. However, the AO by his order dated

14.01.2008 confirmed the notice and adjusted the amount already paid against the aforesaid recovery. A mandatory penalty of Rs. 5,02,556/- equivalent to the amount of duty is also imposed under section 11AC of the Act read with Rule 25 of Central Excise Rules, 2002 (the Rules). However, no interest was imposed.

5. The Assessee filed an appeal before the Commissioner which was allowed on 21.08.2008 on the ground that there was no corroborative evidence in support of clandestine removal except unretracted confessional statement and the charge of clandestine removal was not proved.
6. Aggrieved by the aforesaid order, the Department filed an appeal. This appeal was dismissed on the ground that there was no consent by both the Commissioners at one time. Hence the present appeal by the Department.

THE DECISION

7. We have heard counsel for the appellant.
8. This appeal was admitted on 10.02.2011 on the following substantial question of law:

"Whether the impugned order of the CESTAT is based on illegal and erroneous interpretation of Section 35-B(2) of the Central Excise Act, 1944?"

9. Sub-section (2) of section 35B {35B(2)} of the Act provides that the appeal against the order of the Commissioner under section 35 can be filed if the Committee of Commissioners of Central Excise is of the opinion that the order passed by him is not legal or proper.
10. In the present case, the opinion of the Committee of the Commissioners of Central Excise or authorisation under section 35B (2) of the Act records brief facts of the case and grounds of the appeal and as to why the order passed by the Commissioner (Appeals) is not legal; and thereafter, it opines for filing an appeal.
11. This authorisation is signed by both the Commissioners. However, one of them has signed on 04.11.2008 and the other one has signed on 05.11.2008.
12. There is no mandate that both the Commissioners should sign the authorisation on the same day. The relevant thing is that both the Commissioners must agree on the opinion that the order of the Commissioner (Appeals) is not legal and further appeal should be filed against the same. This was done in the present case. The appeal of the Department could not be dismissed by the Tribunal

on the ground that both the Commissioners have not signed at one time.

13. The question is answered in favour of the Department and against the Assessee. The appeal is allowed and the case is remanded back to the Tribunal for taking decision on merits.