

Collector of Central Excise Vs. Perfect Circle

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-03-1998

Reported in : (1998)(102)ELT233TriDel

Appellant : Collector of Central Excise

Respondent : Perfect Circle

Judgement :

1. Respondent is absent in spite of notice of hearing. There is no representation and no request for adjournment. However, respondent has sent a telegram requesting for a copy of the memorandum of appeal. We find that a copy of the memorandum of appeal had been sent to the respondent along with communication dated 20-6-1991. We have heard Shri A.K. Agarwal, SDR and perused the papers.

2. This appeal has been filed by the department against the order passed by the Collector (Appeals), Bombay in this and three other appeals filed against various orders of the Assistant Collector, Nasik, Div. I. One of the orders passed in question is order dated 4-8-1989.

The dispute relates to rejection of claims of certain deductions on the part of the respondent.

3. On an earlier occasion the respondent filed a writ petition in the Bombay High Court challenging the earlier order passed by the Assistant Collector denying

certain deductions. The writ petition was dismissed.

Respondent challenged this decision in the Supreme Court by way of SLP 8434/84 (Civil Appeal No. 3626 of 1989). Special leave was granted and the Supreme Court passed an order dated 3-5-1989 setting aside the judgment of the High Court of Bombay and the order passed by the Assistant Collector and directing the Assistant Collector to finalise the assessment in the light of the directions issued by the Supreme Court. Para 3(c) of the judgment reads thus :- "All final orders including orders for payments of the demands and the time within which the amounts are to be paid and all incidental, consequential and supplementary matters (including payment of interest) will be determined and decided by this Court, liberty being given to the respective parties to make their appropriate submissions in that behalf." "Liberty to mention for having the matter listed for directions after the fresh assessment is made in accordance with the format".

4. Order dated 4-8-1989 was passed by the Assistant Collector in accordance with the direction issued by the Supreme Court. The respondent, therefore, should have mentioned the matter before the Supreme Court and have his grievance redressed. In view of the specific direction issued by the Supreme Court that respondent could not have challenged the order dated 4-8-1989 of the Assistant Collector, before the Collector (Appeals) and the Collector (Appeals) was in error in entertaining the appeal and disposing of the same. The Supreme Court had passed similar orders in other cases also wherever the parties approached the Supreme Court for redressal against orders passed by the adjudicating authority subsequently, the Supreme Court heard the parties and passed appropriate orders. The order in MRF and other cases reported in 1995 (77) E.L.T. 433 (S.C.) is one of such orders. We, therefore, find that the appeal before the Collector (Appeals) was incompetent and he should not have disposed of the appeal on merits.

5. For the reasons indicated above, we set aside the impugned orders passed by the Collector (Appeals) in the appeal against the order dated 4-8-1989 passed by the Assistant Collector and allow the appeal.

