

Standard Agro Engineers Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-04-1999

Reported in : (1999)(84)LC811Tri(Mum.)bai

Judge : G Srinivasan

Appellant : Standard Agro Engineers

Respondent : Cc

Judgement :

1. This is an appeal filed by the assessee M/s. Standard Agro Engineers against the decision of Collector of Customs (Appeals), Mumbai made in order in appeal No. 163/93-BCH dated 26.3.1993 whereunder he set aside the assessment of Bill of Entry No. 3899 dated 12.12.1991 made in provision of Section 17 of Customs Act.

2. The appellant imported a consignment of "TAM Brand Taper Roller Bearings up to 85 mm vide Bill of Entry No. 3899 dated 12.12.1991. On 6.3.1992 an order of assessment was made on the Bill of Entry. The appellant (sic) felt that the order of assessment passed by the Asstt.

Collector was wrong. By Authorization dated 13.11.1992, the Collector of Customs II for Mumbai Customs authorised filing of an appeal under Section 129(D)(2) of the Customs Act. The appeal was heard by the Collector (Appeals), who by the impugned order set aside the assessee (sic). Hence the present appeal.

3. Shri Kantawala appearing on behalf of the appellant challenges the impugned order. He states that the assessment order of the AC was made on 6.3.1992. The appeal had been signed by the AC on 2.11.1992 and authorisation had been made only on 13.11.1992 by the Collector. He therefore argues that the authorisation is bad inasmuch as the appeal paper were already signed on 2.11.1992. The Collector does not disclose the reasons for authorisation, therefore, it is argued that it lacks legality. He emphasizes to state that the judgment of the Madras High Court reported in A.K. Impex v. UOI 1991 (33) ECR 77 to say that none of the statutory requirements of filing of appeal was taken validly as the Collector has not exercised his power under Section 129(D)(2) of the Customs Act properly. He also states that the show cause notice for less charge had been issued on 28.8.1992 by the department. He therefore feels that the entire order passed by the Collector (Appeals) is vitiated under law.

3.1. As against this Ld. DR would state that the Collector when he ordered filing an appeal, has taken note of the legality of the same and exercised the power in a proper way. He also produced the files containing a note.

4. I have considered the rival, submissions. In this case order of assessment is dated 6.3.1992. In the EA 2 form it is stated that in column 4 thereof on 26.8.1992 an order under Sub-section 2 of Section 129(D) has been passed by the Collector. The Collector of Customs-II had passed an order under Section 129(D)(2) of the Customs Act on 13.11.1992. Shri Kantawala states when the appeal has been signed on 2.11.1992 by the assessee (sic) the Collector, how the authorisation could have been signed subsequently namely on 13.11.1992. I am sorry, I cannot agree with that. For preparation, all the formalities of typing, forwarding etc. have been made by the lower authorities and placed before the Collector who is the designated authority under Section 129(D)(2) of the Customs Act for filing the appeal. The Collector has in the order passed under Section 129(D)(2) specifically stated for the reasons recorded in the enclosed plea and the grounds of appeal he came to opine that for the reasons recorded in the enclosed brief facts of the case and the grounds of appeal the order cited is neither legal nor proper. He therefore directed the AC to file an appeal. In my view this endorsement of the Collector fully answers the argument of the Ld.

counsel mentioned above. There has been application of mind inasmuch as when I looked into the files, it clearly states how the decision making process in this case has taken place. In the relevant file represented from August 1992 has been moved and placed before the proper officer and decision has been taken by the proper authority only. I am sorry to say that the advocate in his argument attempted to challenge the impugned order, has referred to Madras High Court. The judgement of the Madras High Court will not be application (sic) to the facts of the instant case. On the facts mentioned in that case, the Court has found that the Collector did not properly exercise power under Section 129(D) of the Act and it does not mean that the Collector did not exercise power properly in this case. In this case, the Collector has gone through the memorandum of grounds and the brief facts of the case, then only he has passed the instant order under Section 129D of the Act.

When he makes the statement under the review order and he has signed it, which shows the application of mind. The grounds mentioned are reflected in the memorandum of grounds. I am therefore of the view that the contention raised by the Ld. counsel are frivolous in nature. Hence I do not agree with the same. I therefore dismiss the instant case as devoid of merits. Appeal dismissed.

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