Commissioner of Central Excise Vs. Pic (Guj.) Ltd.

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SooperKanoon Citation : sooperkanoon.com/18235

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-10-2000

Reported in : (2000)(120)ELT116Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Pic (Guj.) Ltd.

Judgement :

1. These three appeals were filed by the Commissioner of Central Excise, Ahmedabad, against the single order dated 20-7-1999 by the Commissioner of Central Excise (Appeals), Vadodara. The Commissioner had also filed applications for stay of the operation of this order. On 10-2-2000 when these applications were taken up for hearing, the bench made the following observations : "These three appeals and applications filed by the Commissioner, Ahmedabad were heard by us. We noted the following defects: "Whereas the EA3 Form has been signed and verified by the Deputy Commissioner, the grounds of appeal have been signed by the Commissioner. The grounds are not verified. Signatures of the Commissioner on the grounds of appeal as well as on the authorisation under section 35B(2) are photostat format." 2. Registry to issue a notice under rule 11 of the CEGAT (Procedure) Rules cautioning the appellants that the failure to do so will result in the dismissal of their appeal. Adjourned." 2. Due notice was sent to the Commissioner on 19-2-2000 cautioning him that the appeals were liable to be dismissed in case these mistakes were not rectified. There is, however, no communication from the Commissioner nor is the DR aware of any rectification.

The power to be exercised by the Commissioner under section 35B(2) has to be used with caution. This is because he is challenging the finding of an equivalent authority i.e. the Commissioner (Appeals). Even for a minor error in an authorisation is sufficient for dismissal of the appeal. The Supreme Court in the case of Rohit Pulp and Paper -1998 (101) E.L.T. 5 has held that mere absence of certain key words in the authorisation would render the authorisation and the filing of the appeal as void.

3. In the present case we are indeed surprised that the appellant Commissioner had not attempted to file his authorisation under section 35E(2) in the proper format. What is on record is an unattested photostat copy of his authorisation. This speaks of total non-application of mind. This mistake had been compounded by the lack of effort in correcting the defects in the face of the notice.

4. On this ground we find that the appeals do not sustain and are dismissed.