**Golden Process Vs. Commissioner of Central Excise,**

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**SooperKanoon Citation** : sooperkanoon.com/27185

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Jan-09-2002

**Reported in** : (2002)(143)ELT207Tri(Mum.)bai

**Judge** : G Srinivasan, S T S.S.

**Appellant** : Golden Process

**Respondent** : Commissioner of Central Excise,

**Judgement** :

1. At the outset when this matter was called, the ld. DR raised an objection that this appeal is against a letter No. V.Ch. 55 (30) 39/2001-M-III/3625, which has conveyed a message of rejection of the application made under ASP-1 to avail special procedure relating to processed textile fabrics by the Commissioner of Central Excise, Mumbai III and it is not an order in adjudication. Therefore no appeal will lie to the Tribunal under the provisions of Section 35B of the Central Excise Act, 1944.

2. The ld. Consultant however submitted that a valuable right of the appellant to get the goods assessed, as prescribed under the law, has been denied by the proper officer, that is, the Commissioner, without granting them any hearing. No other order except the above mentioned order was issued and this may be taken as an order in adjudication, against which an appeal can be filed.

3. We have considered the rival submissions and find that no doubt a valuable right of getting the goods assessed, in the manner prescribed under law, has been denied, without granting of hearing. Such an order of denial, should be by an outcome of a quasi judicial proceedings; the same have to be given effect to, by issuing an order of the Commissioner, as an adjudicating authority, after following the prescribed procedure of complying with the principles of natural justice. Communication of said rejection, without grant of hearing and that too by a subordinate officer, by any letter will not be a compliance. The ld. Commissioner, should issue a notice to the appellants giving reasons why his application for assessment under the prescribed procedure cannot be accepted, thereafter grant a hearing and decide the matter and issue an appealable order. The present letter communicating the decision of the Commissioner cannot be an order in adjudication. We cannot uphold such letters to be orders against which the appellant, though aggrieved, can be appealable under Section 35B of the Central Excise Act, 1944.Commissioner of Central Excise, Mumbai III v. Raptakos Brett & Co. Ltd. - 2001 (130) E.L.T. 603 (T) = 2000 (40) RLT 492, we had held that - "In our view, the thrust of Section 35B is that it must be an order or decision passed by the Adjudicating Authority, whereas, in Section 35 there is no such words. The words used are decision or order in Section 35. It seems to us even an administrative decision or order passed by a Central Excise Officer as an Executive or a Quasi Judicial person can be challenged before the Commissioner (Appeals)." A plain reading of Sections 35 and 35B would indicate that appeal, against such letters as in this case cannot be entertained by this Tribunal. This appeal is therefore liable to be dismissed. The appellants are free to file an appeal after obtaining an order in adjudication from the said Commissioner.

5. In view of our finding, this appeal is dismissed as not maintainable. Stay application disposed of.