

Fci Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-18-2002

Reported in : (2002)(84)ECC31

Judge : N T C.N.B., P Chacko

Appellant : Fci

Respondent : Collector of Customs

Judgement :

1. These three appeals of Food Corporation of India raise a common issue. That issue is whether Ammonium Chloride imported by them were eligible for exemption in terms of ad hoc exemption Order No. 404, dated 29-9-75 of the Government of India.

2. The Id. Counsel representing the appellants submits that the ad hoc exemption Order No. 404, dated 29-9-75 of the Government of India related specifically to the import of 30,000 M.T. of Ammonium Chloride mentioned in that order. However, the impugned order rejected the refund application of the appellants on the ground that goods had already been imported prior to the issue of the ad hoc exemption order and for that reason the goods are not covered by the order. During the hearing of the case, the Id. DR also took us through the order in original to show that refund claim was time-barred inasmuch as the claim was originally made based on certain other ad hoc exemption order which did not relate to the goods in question and the relevant ad hoc exemption order was produced only much later.

3. It is the contention of the Id. Counsel for the appellants that the impugned order is grossly illegal inasmuch as it has been issued contrary to the order passed by this Tribunal with regard to the same ad hoc exemption order vide CEGAT Order No. 94/84, dated 20-2-84 [1984 (17) E.L.T. 180 (Tribunal)]. The Id. Counsel pointed out that the facts of the present case were identical to that of Order No. 94/84, inasmuch as, the goods had already been imported and the ad hoc exemption was issued several months after the landing of the goods. Ld. Counsel pointed out that the CEGAT had held in that case that refund application had been filed within the time limit provided under the Customs Act even though the ad hoc exemption order was of a later date and was filed subsequently. The Id. counsel emphasised that the rejection of the present application under the impugned order was in complete disregard of the Tribunal's decision and cannot be sustained.

4. We find that this Tribunal's order No. 94/84 was also with regard to goods imported by FCI and the ad hoc exemption order was also the same i.e. 404, dated 29-9-75. The facts of the case were identical inasmuch as the exemption order was issued only on 29-9-75 while the goods in question had arrived in Jan. 1975. A perusal of the record also shows that while the goods arrived in Jan. 1975 the exemption application was submitted in Feb. 1975 and the exemption order issued in Sept. 1975.

Thus, our order of 94/84, dated 20-2-84 was on identical facts and questions of law. The Commissioner was, therefore, bound to follow that order and to allow the appellant's claim for refund. The Commissioner has recorded in para 33 that "I am afraid that I respectfully disagree with the Hon'ble CEGAT s above quoted observation for the following reasons.....".

Such a course was not open to the Commissioner. If the Revenue authorities are aggrieved with the appellate order of the CEGAT, remedy available would be to file appeal and to get erroneous orders corrected through a higher forum of appeal and not to "disagree" and disobey those orders.

5. in the above circumstances, we are not able to find any sustain-able ground in the impugned order. The issue is covered in favour of FCI by our Order No. 94/84. The impugned order is set aside and the appeals are allowed with consequential

relief to the appellants.

6. P.G. Chacko, Member (J)- The issue before us stands squarely covered in favour of the assessee by the Tribunal's Order No. 94/84-C *ibid*.

passed on identical issue in a case between the same parties.

Therefore, in my view, the Revenue's claim before us in the instant case is clearly hit by the bar of *res judicata*. I therefore subscribe to the order recorded by learned Brother.

7. The ruling given by this Tribunal in Order No. 94/84-C *ibid*. on identical issue between the same parties had undisputedly attained finality and binding effect by the time the Collector (Appeals) passed the impugned order. What was open to him to do was, as aptly noted by learned Brother, just to follow the said ruling of the Tribunal and allow the assessee's appeals. What he chose to do was to disagree with the Tribunal for certain reason as though he could sit in judgment over the Tribunal's wisdom. Judicial discipline is a part of rule of law.

The Collector (Appeals) has acted in gross breach of judicial discipline, for which he needs to be held accountable.

8. A Collector/Commissioner (Appeals) is one of the departmental authorities that are subject to the control and superintendence of the Tribunal under Rule 40 of the CEGAT (Procedure) Rules, 1982. I find a glaring element of contempt of this Tribunal in the above conduct of the Collector (Appeals) and would like to invoke Rule 40 *ibid* as well as the inherent powers of the Tribunal to ensure that appropriate action is taken by Government so as to secure judicial discipline of the departmental authorities concerned. The Registry shall accordingly forward a certified copy of this order to the Ministry of Finance, Government of India for necessary action.

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