

Cce Vs. Niranjan Plastics

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-02-2002

Reported in : (2003)(108)LC629Tri(Mum.)bai

Judge : G Srinivasan

Appellant : Cce

Respondent : Niranjan Plastics

Judgement :

1. When the appeal was taken up I have gone through the authorisation signed by the Commissioner. It does not contain the crucial words "not legal values" or in terms of Section 35B(2) of the Central Excise Act.

In view of this the said section of the Central Excise Act, it has not complied with mandatory legal requirement. The question was considered by the larger bench in the case of Commissioner of Central Excise, Mumbai v. Bombay Switchgear where the Larger Bench of the Tribunal has held as follows: Now coming to the facts of the present case, admittedly, the order authorising the appeal does not refer to any satisfaction on the part of the Commissioner that the order appealed against is not legal or proper. Learned Departmental Representative made available to us photocopy of the note sheet of the relevant file. Thereafter the file was transferred to the office of the Principal Collector and a fresh note is seen put up to the effect that appeal has to be filed; with reasons supporting the view. This note is dated 22.7.1993. The Principal Collector has endorsed the above note on

22.7.1993. Thereafter a draft appeal petition is seen prepared and placed before the Collector. We find endorsement by the Collector on 23.7.1993 agreeing with the fresh note without giving any reason whatsoever for taking a different view from the endorsement on 2.6.1993. The above would go to show that the view taken by the Principal Collector on 22.7.1993 was just accepted by the Collector on 23.7.1993 without applying his mind to the issue independently.

Satisfaction on the part of the Collector regarding legality or propriety of the order appealed against is not reflected from the file. On the other hand, the file would show otherwise. Therefore, in the facts of, this case we hold that there was no proper authorisation for filing an appeal as contemplated by Section 35B(2).

2. Shri. Hitesh Shah, learned DR swiftly states that the matter can be viewed as a curable defect. I have to reject this ingenious contention out right. We ought to see tenor of the provision of Section 35B(2) of the Act. If the argument of the learned DR is accepted then the words "not legal and proper" contained in the section mentioned above would viewed not as a mandatory one. This type of thinking will militate against the reasoning of the judgements of the Supreme Court in the cases of Collector v. Berger Paints India Ltd. 1940 (47) ELT 210 : 1990 (29) ECR 433 (SC) and Commissioner v. Rohit Pulp Paper Mills . Provision of Section 35(B) of the Act has to be viewed in a solemn and mandatory way. It could not be treated as director'. Hence I reject the plea put forth by Learned D.R. I reject the appeal.

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