

**Collector of Central Excise Vs. Triveni Engineering Works**

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

**Decided On :** Nov-25-1986

**Reported in :** (1987)(10)LC365Tri(Delhi)

**Appellant :** Collector of Central Excise

**Respondent :** Triveni Engineering Works

**Judgement :**

1. Initially Appeal No. ED/Del/2891/84 NRB was filed by the appellant against the single Order in Appeal No. 549 to 551/CE/MRT/84, dated 18.8.1984 passed by the Collector (Appeal), Central Excise, New Delhi, disposing of three separate appeals which were filed against the Order in Original No. viz., (1) V(68)/2/80/1217, dated 6.2.82 of the Asstt.

Collector, Central Excise, Meerut, (2) No. V(15)(I)Off/Adj 103/81/6521, dated 26.2.82 of the Dy. Collector, Central Excise, Meerut and (3) No.V(15) 239 Off/81/900, dated 29.9.1981 of the Superintendent, Central Excise, Mawana. The said appeal was received in the Registry on 20.12.1984. Subsequently the appellant submitted separate Appeal No.E/1617/85 NRB and Appeal No. E/1618/85 NRB along with the applications for condonations of delay under his letter dt. 1.8.85 which was received in the Registry on 5.8.85. The respondents have also filed their Cross Objections in all the 3 captioned appeals.

2. Factual backdrops : Three offence cases were booked against the respondents for alleged clandestine removal of molasses of three sugar seasons, namely 1978

79, 1979 80 and 1980 81. As a follow up action separate Show Cause Notices were issued in all the said three cases to the respondents. In reply the respondents while admitting the shortage submitted that the said losses occurred during the course of storage and despatch. The Adjudicating Authority however did not agree with the said defence of the respondents and accordingly held them guilty for contravening the provisions of Rule 9, 52(A), 173 G and 173 Q of the Central Excise Rules, 1944 and demanded the appropriate duty in all the three said cases and also imposed various personal penalties. Being dis satisfied the respondents filed their appeals in all the three said cases before the Collector (Appeals), Central Excise, New Delhi. Since the issue involved in all the three appeals was a common one, they were disposed of by a single Order in Appeal No. 549 551/CE/MRT/84 dated 18.8.1984. By the impugned order, the Collector (Appeals) held that the losses in question on which duties were demanded were due to natural causes or due to handling or due to circumstances beyond the control of respondent company and accordingly allowed all the appeals after setting aside the Order in Original passed by the Adjudicating Authority in all the three cases as stated above. Being dis satisfied the Department has filed the present appeals along with the applications for condonation of delay as stated above. The respondent company have also filed their separate Cross Objections as stated above.

3. I have heard Smt. Nisha Chaturvedi, Learned SDR for the appellant and Shri M.D. Chaudhary, Learned Advocate for the respondents.

4. At the time of hearing Shri M.D. Chaudhary, Learned Counsel for the respondent raised the preliminary objection that since the appeals relate to storage losses in a factory and a warehouse as held by the Collector (Appeals), the present appeals are not maintainable in view of the amendment to the Central Excises and Salt Act, 1944 by the Finance Act, 1984. He elaborated that any appeal in respect of loss of goods or shortage of goods in a factory or in a warehouse or in transit will have to be filed before the Govt. of India and not before the Tribunal in view of the newly added proviso to Section 35 B of the Central Excises and Salt Act, 1944. He further submitted that it is an admitted fact that the said amendment came into force from the 11th day of May, 1984 and the present

appeals were filed after the coming into force of the said ,amendment. On this premises he submitted that the appeal should be returned to the Dept. for proper presentation before the forum having jurisdiction, if so advised. Smt. Nisha Chaturvedi, Learned SDR for the appellant refuted the arguments of the respondents and submitted that the appeals are maintainable.

5. After hearing both the parties, I am of the view that the aforesaid preliminary objection has force in law in view of the decision rendered by the Hon'ble High Court of Madras in the case of India Pistons Ltd. v. Asstt. Collector of Central Excise and Ors. W.P. No. 5698 of 1986 decided on 23.9.1986. In that case during the course of annual stock taking conducted by the Asstt. Collector of Central Excise, Madras in the petitioner's company certain alleged shortages and excesses were noticed. Consequently, the company was called upon to show cause as to why duty on shortages in question be not demanded and why penalty be not imposed under the provisions of Central Excise Rules, 1944. In reply, inter alia it was contended by the company that the alleged shortages could be set off against the excesses in respect of similar products. However, this defence did not find favour with the Adjudicating Authority and accordingly the Adjudicating Authority demanded the appropriate duty besides imposing a personal penalty.

Against the order of the Adjudicating Authority appeal was filed by the company before the Collector (Appeals), Central Excise, Madras which was allowed with the direction that the company is permitted to adjust the shortages against the excesses. Against that order of the Appellate Authority, appeals were filed before this Tribunal which were disposed of in these terms : "On a proper construction and interpretation of the expression 'loss of goods' occurring in Clause (a) in proviso to Section 35 B of the Act, we are of opinion that the proper forum which would be competent to entertain an appeal of this sort is only the Central Govt. in terms of Section 35 EE of the Act. We also note that by mistake the appeals have been filed before the Tribunal, of course, within the time limit and the appeals have also been inadvertently numbered by the Registry and were kept pending in the Tribunal till this day. In such a situation in our opinion justice and fair play demand that the appeals should be made over to the appropriate and competent authority, viz., the Central Government for disposal according to law." 6. Being dis satisfied

with this order of the Tribunal the company went in writ (W.P. No. 5698 of 1986, supra) before the Hon'ble High Court of Madras challenging that part of the order of the Tribunal which related to the transfer of the appeals to the Central Govt. for disposal according to law. In that case it was also argued by the Standing Counsel for the respondents that "the findings of the Tribunal (as extracted above) are not definite that it has no jurisdiction. It says that the question relating to jurisdiction is debatable. The Excise Deptt, is prejudiced by such a finding, because the question of jurisdiction to deal with the appeal will have to be categorically found. If that has not been found, then the order of transfer is otiose." On this premises it was prayed by the Deptt. that the said Order of the Tribunal in question be set aside and the case be remitted to the Tribunal for fresh consideration on the point of jurisdiction.

While disposing of this prayer of the Deptt. the Hon'ble High Court inter alia held that the earlier part of the order as extracted above, clearly shows that the Tribunal has come to a definite conclusion that in view of Section 35 B [proviso Clause (a)] the proper forum would be only the Central Government in terms of Section 35 EE of the Act. In the result, their Lordships allowed the writ and passed the following order : "In view of the finding rendered by the Tribunal that the proper forum is the Central Govt. under Section 35 EE of the Act, the appeal papers filed before the Tribunal by the Deptt. will be returned to the Deptt. for proper presentation, before the forum having jurisdiction, if so advised." 7. In the light of the foregoing discussions, I am of the view that the appeals in hand are not maintainable before this Tribunal in view of the amendments to the Central Excises and Salt Act, 1944 by the Finance Act, 1984 and proper forum which would be competent to entertain the appeals is the only Central Govt. in terms of Section 35 EE read with proviso to Sub section (1) of Section 35 B of Central Excises and Salt Act, 1944. Accordingly, the preliminary objection is upheld and the Registry is directed to return the appeal papers including the applications for condonation of delay to the appellant for proper presentation, before the forum having jurisdiction, if so advised.

Likewise the Cross Objections filed by the respondents be also returned to the respondents for proper utilisation, if so advised.

