Collector of C.E. Vs. Arch International

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-24-1987

Reported in : (1990)(47)ELT273TriDel

Appellant : Collector of C.E.

Respondent : Arch International

Judgement :

1. In view of the nature of the order that we propose to pass in these appeals it is unnecessary to state the facts of the appeals in detail.

These appeals are by the Collector of Central Excise & Customs, Jaipur against order-in-appeal No. 1856 and 1220 CE/80 of the Appellate Collector of Central Excise, New Delhi received by the appellant-Collector on 12-1-1981. These appeals have been prepared and signed on 5-1-1983 and received in this Tribunal the same day. In view of the said dates it was enquired of Smt. Saxena representing the appellant-Collector as to how the appeal were maintainable. Shri Gopal Prasad, Consultant for the respondents no doubt stated that he does not propose to raise this ground of time bar in preferring the appeals, That was evidently for the reason that, as stated by the Consultant the respondents wanted to prefer cross objections. This was evidently with reference to the portion of the relief denied to them under the order of the Appellate Collector. But if the appeal itself is not maintainable there would be no case of the respondents being entitled to file and maintain a cross objection with reference thereto seeking for further reliefs then were granted to them under the order of the Appellate Collector.

2. As earlier mentioned the impugned order-in-appeal had been received by the appellant-Collector on 12-1-1981. As on that date the Department had no right to appeal but could only initiate proceedings for review of the said order. Admittedly the time available for such review would be, at best, one year only. That means by 12-1-1982 even the right of review had been lost and the impugned order-in-appeal had, therefore, become conclusive. Smt. Saxena no doubt contended that this Tribunal has unlimited powers of condonation in respect of delay in preferring the appeal to the Tribunal. She therefore stated that taking into consideration the circumstances detailed in the memorandum of appeal the delay if any should be condoned. The fallacy of this argument is that it presumes that the appellant-Collector had a right to prefer an appeal to this Tribunal but had not preferred the appeal within the time limit stipulated. As earlier mentioned the right of review which alone was available as on 12-1-1981 had come to an end by 12-1-1982.

This Tribunal came into being on 11-10-1982 only. Therefore, there was no question of the appellant-Collector having been entitled to file an appeal to this Tribunal but not having preferred it within the time stipulated. Therefore, there is no question of the Tribunal exercising its powers for condonation of the delay in preferring the appeals.

3. In this view we hold that these appeals are not maintainable at all and accordingly reject both appeals as not maintainable.