Commissioner of Central Excise Vs. Bajaj Plastics Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-24-2004

Reported in : (2004)(169)ELT308Tri(Mum.)bai

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Bajaj Plastics Ltd.

Judgement :

1. This is revenue's appeal against the order in appeal passed by the Commissioner (Appeals) whereby revenue's appeal against the adjudication order passed by the Additional Commissioner was rejected by the Commissioner (Appeals) solely on the ground that the department's appeal was filed by the Assistant Commissioner and not the adjudicating authority namely the "Additional Commissioner" i.e. the adjudicating authority.

2. Heard the DR. The respondents have furnished written submissions and placed reliance on the judgments of Cegat in the case of Commissioner of Central Excise, Nagpur Vs. Lloyds Metals and Engineering Ltd. & Others reported in 2003 (59) RLT 229.

3. In the revenue's appeal, reliance has been placed on two decisions of Cegat namely : - Collector of Central Excise, Bangalore Vs. Falcon Tyres Ltd. reported in 1997 (91) ELT 649 (Tri.) Sun Export Corporation Vs. Collector of Customs

reported in 1989 (42) ELT 308 (Tribunal) to claim that the appeals filed by any other authorised officer is not invalid. The Commissioner (Appeals) has relied upon the judgment of the Cegat in the case Dhanpur Sugar Mills Co. Ltd. Vs. Commissioner of Central Meerut - 1999 (108) 498 (Tribunal) which holds that only the "adjudicating authority" can be directed to file an appeal in terms of Section 35E(2). The contrary decisions of Cegat cited in support by the revenue only try to road the other provisions, where any authorised officer can filed appeal and by reading harmoniously held that "an authorised officer" can also filed appeal. The said proposition being against the express provision of law as analysed by the latter decision of the Tribunal the latter decisions including the ones cited by the respondents have to be preferred.

4. Consequently the revenue appeal deserves to be rejected. Hence rejected.