**The Commissioner of Central Vs. Kheraj Electricals Industries**

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**SooperKanoon Citation** : sooperkanoon.com/35739

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

**Decided On :** Jun-24-2004

**Reported in** : (2004)(173)ELT413Tri(Mum.)bai

**Judge** : M T K.D.

**Appellant** : The Commissioner of Central

**Respondent** : Kheraj Electricals Industries

**Judgement** :

1. This revenue appeal is filed against the order-in-appeal passed by the Commissioner (Appeals). The appeal involves a short point. The Commissioner (Appeals) had rejected the appeal filed by the revenue, because the said appeal was directed against the order of adjudication passed by the Joint Commissioner, whereas the appeal was filed under Section 35E (1) by an authority other than the adjudicating authority.

In terms of provisions contained in Section 35E (2) of the Central Excise Act, the Commissioner of Central Excise is required to direct the adjudicating authority to file an appeal before the Commissioner (Appeals). Instead, in the instant case the appeal was filed by the Deputy Commissioner of Central Excise. The Commissioner (Appeals) rejected the appeal as not maintainable in law. The revenue appeal challenges the order of the Commissioner (Appeals).

2. On going through the grounds of appeal it is seen that the revenue is placing reliance of the provisions of Section 35E of the Central Excise Act which indicates that an application to the Commissioner (Appeals) has to be made either by the adjudicating authority or the authorised officer. Accordingly the appeal filed by the authorised officer is claimed to be maintainable. Reliance was also placed on the judgment of the Tribunal in the case of CCE, Bangalore v. Falcon Tyres Ltd., reported in 1997 (091) ELT 0649 (TRIB) which held that, the appeal filed by the authorised officer is also valid. The respondents on the other hand have placed reliance on the judgment of the Tribunal in the case of CCE, Nagpur v. Lloyds Metals & Engineering Ltd., and Ors. Reported in 2003 (59) RLT 225 (CEGAT-Mum) which takes into account, the Tribunal judgment in the case of Falcon Tyres Ltd., (supra) and also several other judgments and placed reliance on the judgment of the Hon'ble Supreme Court in the case of CCE, v. M.M.Rubber Co. Ltd., reported in 1991 (55) ELT 289 (SC), which hold that the appeal filed by an authority other than the adjudicating authority is not maintainable.

3. On going through the said judgment of the Supreme Court it is noted that, the Hon'ble Supreme Court in Para 6 of the judgment, had observed as under- "It may be seen that the direction to file an appeal under these two sub-sections by the Board and the Collector, as the case may be, is to the very adjudicating authority who would otherwise be bound by his own order and not expected to be aggrieved by the same. When an appeal is filed on such direction, the appellant will be the adjudicating authority himself and not the authority who gave the direction." 4. In the light of the observations above, I note that the revenue appeal has no merits, and deserves to be rejected. Accordingly, the revenue appeal is rejected.