

Collector of C. Ex. Vs. Plastic Processing Company

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-25-1987

Reported in : (1989)(42)ELT719aTriDel

Appellant : Collector of C. Ex.

Respondent : Plastic Processing Company

Advocate for Def. : Shri. N. Mookherjee

Judgement :

1. This purported appeal has been filed by the Deputy Collector (I) of Central Excise, Calcutta against the order-in-Appeal noted above. The Memorandum of Appeal and the verification have been signed by the Deputy Collector. The authorisation by the Collector, as required in terms of Section 35B(2) of the Central Excises and Salt Act, 1944 ("the Act", for short), has not been enclosed to the purported appeal papers.
2. When this matter was taken up on 26-5-1987, Shri N. Mookherjee, counsel for the respondents, referred to the "Cross-objection" filed by the respondents and reiterated the objections taken therein to the maintainability of the purported appeal since the Collector had not authorised the Deputy Collector to file an appeal.
3. We have heard the counsel and Shri Vineet Kumar, Sr. D.R. on the above point.

4. It may be stated at the outset that the respondents having succeeded in their appeal before the Appellate Collector, they have no cause to file any cross-objection to the Collector's appeal. As such, it is incompetent and is dismissed on that ground.

5. But the objection taken by the counsel remains to be considered.

Shri Vineet Kumar produced before us an authorisation issued by the Collector in the name of the Deputy Collector. It is, however, post dated having been signed on 4-10-1983, the appeal itself having been filed in March 1983. The Sr. D.R. submitted that since an authorisation had now been produced, the Collector should be deemed to have ratified the filing of this appeal by the Deputy Collector and the procedural lacuna in not filing the Collector's authorisation should be condoned and the appeal heard on merits.

6. We have considered the submissions of both sides and also perused the Collector's file produced for our scrutiny. It appears from the file that the then Collector had, on receipt of the order-in-appeal, considered that the Central Government should be approached to consider review of the said order under Section 36 of the Act as it stood at the material time. This was on 18-9-1982. It appears that before any action was taken in this direction, this Tribunal was constituted. Thereupon the remedy against the order-in-appeal was to file an appeal before this Tribunal, a right conferred on the Collector for the first time.

It is the Sr. D.R.'s submission that the Collector's direction in the matter of approaching the Central Government for review of the order should be deemed to be as good as an authorisation to file an appeal to this Tribunal in the changed circumstances. The lack of contemporaneous formal authorisation is only a procedural lacuna which could be overlooked and the appeal entertained on the basis of the authorisation presently filed.

7. As we have already noted, the "appeal", as filed, is by the Deputy Collector. In the given cause title the name of the appellant is shown as Deputy Collector (I), Central Excise, Calcutta. Admittedly, when the "appeal" was filed by the Deputy Collector, there was no authorisation in his name by the Collector under Section

35B(2) of the Act. This provision postulates that the Collector is of opinion that an order passed by the Appellate Collector or Collector (Appeals) is not legal or proper and that he directs any Central Excise officer authorised by him in this behalf to appeal on his (Collector's) behalf to the Tribunal against such order. No doubt, the Collector had considered the impugned order and directed that the Central Government should be approached to, review it under Section 36 of the Act as it stood at the material time. We do not think that this consideration and the note recorded by the Collector on the basis of such consideration amount to an opinion as envisaged by Section 35B(2). At the material time, when the Collector recorded his note, there was no statutory provision regarding the Collector forming an opinion that the Appellate Collector's order was not legal or proper and directing an application for revision to be filed before the Central Government. Even if the Collector note could be taken to meet the requirement of "opinions" as envisaged in Section 35B(2), the requirement of an authorisation of the Deputy Collector by the Collector to file an appeal to the Tribunal has clearly not been met. There was no such authorisation. The Deputy Collector, or for that matter, any Central Excise officer cannot purport to act on the Collector's behalf unless authorised by the Collector. The purported appeal then was one filed without authority and is incompetent. This defect is not a mere procedural lapse which could be rectified by an authorisation issued to the Deputy Collector much later in point of time because the authorisation has to precede, or, at least, be contemporaneous with, the filing of the appeal. Lack of such authorisation amounts to failure to comply with the statutory requirement. In our opinion, the defect cannot be cured by the subsequent authorisation by a successor Collector after a long lapse of time.

8. We would therefore, dismiss the purported appeal as not maintainable.

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