

Commissioner of Central Excise Vs. Pearl Engineering Polymers Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-27-2006

Judge : J Balasundaram, Vice-, A T K.K.

Appellant : Commissioner of Central Excise

Respondent : Pearl Engineering Polymers Ltd.

Judgement :

1. The appellants in this case have filed an appeal against the order of Commissioner, Central Excise, Pune dropping the demand relating to un-accounted production and clearances by the respondents M/s Pearl Engineering Polymers Ltd. Before the learned S.D.R. could argue the case on merits, the learned advocate for respondents raised a plea on the ground of limitation stating that the appeal filed by the department was beyond the time limit permissible under Section 35E(4) of the Central Excise Act, 1944.

2. In his pleading the learned advocate of the respondent stated that a review order under Section 35E(1) was issued by the Central Board of Excise & Custom on 17/4/2000 by which the Board directed Commissioner, Central Excise, Pune-II to file an appeal with Custom Excise Gold Control Appellate Tribunal against the order of Commissioner, Central Excise, Pune. This order was received by Commissioner, Central Excise, Pune-I on 31st May, 2000. As per provision of Section 35E(4) an appeal is to be filed thereafter by the adjudicating authority with the Tribunal within a period of 3 months of the date of receipt of the order by the Board. In the present case, the appeal has been filed by the Department on 4th

September 2000 and therefore it was beyond the period provided under Section 35E(4) and hence, cannot be entertained.

It was further submitted that though the appeal was ultimately filed by Commissioner, Central Excise, Pune-I under whose jurisdiction the unit falls received the review order only on 23.06.2000 from Commissioner, Central Excise, Pune-II, the period of three months will be counted from the date when the review order was communicated to Commissioner, Central Excise, Pune-II by the Board as was held by the Hon'ble Supreme Court in the case of G.T.C. Industries Ltd. v. Collector of Central Excise, New Delhi 1997 (94) E.L.T. 9 (S.C.). It was submitted that in this case a matter relating to one of the Commissionerate in New Delhi was adjudicated by Commissioner (L&A), New Delhi which was reviewed by the Board and the review order of the Board was conveyed in the year 1992. However, the appeal was filed in the year 1995 by Commissioner (L&A) i.e. 3 years after the date of Board's review order. The Commissioner (L&A) pleaded before the Supreme Court that the Board's review order was not endorsed to Commissioner (L&A) and he came to know of the same on 7th December, 1995 only and thereafter the appeal was tiled by him on 14th December, 1995. The Commissioner, therefore, pleaded that the appeal was within time as it was filed within 3 months from the date of the receipt of order by him. The Hon'ble Supreme Court, however did not find favour with this plea and held that since the Board's order was endorsed to the Principal Collector Central Excise, New Delhi in whose jurisdiction the unit fell, the requirement of Section 35E that the communication of the Board's order should be made was satisfied long before 7th December, 1995. Consequently, the Revenue's appeal was held to be beyond time. The learned advocate for the respondent therefore submitted that the department's appeal should be dismissed as having been filed beyond permissible time.

3. The learned S.D.R. on the other hand contended that in this case the adjudicating authority was Commissioner Central Excise, Pune-I under whose jurisdiction the unit fell and since the review order was received by Commissioner, Central Excise, Pune-I on 23.6.2000 the period of 3 months should be counted from this date and hence was within time. It was further submitted that even though in the review order the directions were given to Commissioner, Central

Excise, Pune-II, the copy was endorsed to Commissioner, Central Excise, Pune-I and further there was some overwriting in the last paragraph of the order wherein Commissioner, Central Excise. Pune -I was corrected by hand made Pune-II. It was submitted that since the relevant authority was Commissioner Central Excise, Pune-I, the time period should be counted from the date Commissioner, Central Excise, Pune-I received the review order. An alternate plea was made that in case the appeal is held to having been filed beyond time, the delay which was only few days may kindly be condoned and in this regard the learned S.D.R.invited attention to Hon'ble Supreme Court's decision in the case of State of Haryana v. Chandra Mani wherein the Hon'ble Supreme Court has held that state cannot be put on the same footing as an individual in the case of delay in filing the appeal and certain amount of latitude is therefore no impermissible. He, therefore, pleaded that the delay may be condoned.

4. The learned advocate for the respondents, however, pleaded that under Section 35E, there is no provision for condoning delay and invited attention to Larger Bench decision of the Tribunal in the case of Commissioner, Central Excise, Mumbai v. Azo Dye Chem wherein it was held that in an application filed under Section 35E(4) of the Central Excise Act, 1944, the Tribunal has no power to condone the delay caused in filing the appeal beyond the period of 3 months allowed by that clause as is the case in appeal under Section 35B.5. We have heard the submissions made by both the parties. We find that the facts in the present case are squarely covered by the Hon'ble Supreme Court decision cited supra (Para 13) and accordingly, we hold that the appeal has been filed beyond time permissible under Section 35E(4).

6. Since the appeal is not maintainable on the ground of limitation, we did not consider it necessary to go into the merits of the case. The plea of condonation of delay also cannot be entertained as there is no such provision under Section 35E(4) as held by the Larger Bench of the Tribunal in the case pointed out by the respondents.

7. The appeal is accordingly dismissed as having been filed beyond time.