

Collector of Central Excise Vs. Electrols

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-09-1990

Reported in : (1990)(30)LC270Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Electrols

Advocate for Def. : Shri. A.K. Jain

Judgement :

1. The above appeal arises from the order of the Collector of Central Excise (Appeals), Bombay dated 31-3-1983 involving the issue of eligibility of the Respondents to avail of exemption under Notification 89/79 dated 1-3-1979 in respect of goods falling under T.1.68 of the erstwhile Central Excise Tariff.

2. At the out set the learned advocate for the respondent raised the following two preliminary objections: (1) that the Collector has not formed and expressed an opinion that the impugned Order-in-Appeal was neither legal nor proper as required under Section 35B(2) of the CESA 1944.

(2) The appeal, though Filed with the Assistant Registrar of West Regional Bench within the statutory time limit of 3 months, was received in the Special Bench after expiry of that time limit and as such the appeal was barred by limitation and during the material time of the appeal Section 35D(2) read with rule 6(1) of the CEGAT (Procedure) Rules, 1982 did not permit filing an appeal relating to a Special Bench

matter before the Regional Bench.

3. We have heard Shri A.K. Jain, counsel for the respondent herein and Shri L.C. Chakravarti, learned DR, on the preliminary points.

4. In this case the decision to file an appeal was taken by the Collector in the Collectorate file bearing No. V(Tr.

Cell)/IV/APPL-37/83. The Order-in-Appeal was examined by the subordinate officers in note sheets of the said file (Photocopies of the note sheets were supplied to the Bench and to the Ld Advocate for the respondents). We have gone through this note sheets and find that a detail note was put up to the Collector as to the illegality and propriety of the impugned order and reading of the relevant portion of the file makes it clear that the Collector had formed an opinion about the illegality or propriety of the Order-in-Appeal as a result of which he ordered that an appeal maybe filed. The notings and order in the file showing that the Collector has formed an opinion is sufficient compliance with the requirement of formation of opinion as required under the provisions of Section 35B(2) and it is not necessary that the grounds of his opinion should be disclosed. In the case of Collector of Central Excise v. K. Manibhai & Co. reported in 1989 (43) ELT 671, the Tribunal held that the Collector was not under a legal obligation to record reasons or grounds for forming opinion about the order of the Collector (Appeals) not being proper and legal and only formation of such opinion by the Collector was necessary. In the case of C.C.E., Madras v. Sundaram Fasteners Ltd., Madras 323. The Tribunal held that the Collector had come to his opinion after considering all relevant facts and on application of his mind and therefore, non-disclosure of the reasons by the Collector in the authorisation order would not invalidate the authorisation and the appeal. The Tribunal held that all the necessary facts had been placed before the Collector for approval of the draft grounds of appeal.

5. The ratio and facts of these two decisions are applicable to the facts of the present case. The two decisions cited by the counsel for the respondent are distinguishable from the facts of this appeal. In the case of CCE, Bangalore v. Mizar Govinda Annappa Pai, reported in 1986 (7) ECR 196, the Tribunal held that the notice to show cause only speaks of tentative view of Central Government to

Review the order under Section 36(2) of CESA 1944 and does not express any opinion which is a condition precedent under proviso 3 to Section 36 (2). In the case of CCE, Cal. v. Plastic Processing Company under [494-87-D dated 25-6-1987 - 1989 (42) ELT 719 A (Tri.)], the Tribunal held that there was no authorisation by the Collector under Section 35B (2) of the CESA 1944.

6. In view of the fact that we have held that the Collector has formed the necessary opinion in the file, the first objection of the respondents is not sustainable and is over-ruled.

7. Regarding the 2nd objection, it is relevant to note that the right of the Collector to file an appeal to the Appellate Tribunal challenging the legality of an Order-in-Appeal is traceable to Section 35B(2) which provides that an appeal is to be filed to the Appellate Tribunal, without containing any specific mention as to before which Bench such an appeal is to be filed. In addition Section 35D(2) provides that "every appeal against a decision or order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or the value of goods for purposes of assessment, shall be heard by a Special Bench constituted by the President for hearing such appeals". This shows that such an appeal has to be heard by a Special Bench and not that such an appeal has to be filed before a Special Bench. In addition amendment to rule 6(1) of the CEGAT (Procedure) Rules, 1982 vide CEGAT Notification No. 1/83 dated 26-12-1983 permitting to filing of the appeals in matters relating to a Bench before another Bench in case of urgency or for other sufficient reasons, makes explicit what was already implicit. Further the issue involved in the appeal was the entitlement of the respondents to the benefit of exemption notification and there was genuine confusion in the early years of the Tribunal as to whether Special Bench or Regional Bench had jurisdiction in the matter of application of exemption notification and both Special Benches as well as Regional Benches were entertaining appeals in such matters. Therefore there was sufficient reason for the Collector to believe that the present appeal fell within the jurisdiction of the Regional Bench, namely: West Regional Bench.

8. It is also well settled law that the substantive right of filing an appeal granted under a statute cannot be affected by procedural aspect of filing an appeal before Special Bench or Regional Bench. In any event assuming that the appeal before the Special Bench is barred by limitation all that would be required for the department would be to file an application for condonation of delay which would be favourably considered as has been done earlier in similar facts and circumstances.

9. For the above reasons we hold that the 2nd objection of the respondent is also not sustainable and is over-ruled.

10. Having held that the appeal is maintainable and has been filed within time, we direct registry to fix a date for hearing of the appeal on merits.

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