

**Collector of Central Excise Vs. Perfect Engineers**

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

**Decided On :** Feb-20-1991

**Reported in :** (1991)LC277Tri(Delhi)

**Appellant :** Collector of Central Excise

**Respondent :** Perfect Engineers

**Judgement :**

1. Collector of Central Excise, Indore, has filed an appeal being aggrieved from the order passed by the Collector of Central Excise (Appeals), New Delhi. The said appeal was received in the-Registry on 21-5-1990. Simultaneously a stay application was also filed. A notice of hearing dated 23-5-1990 was sent by registered A.D. Post and the stay application was listed for hearing on 26-6-1990. When the matter came up for hearing on the said date, the Revenue was represented by Shri M.S. Sawhney, SDR and the Bench had pointed out that in terms of Rule 28 of the CEGAT (Procedure) Rules, 1982, the stay applications should have been supported with an affidavit and on the request of the SDR the matter was adjourned to 3rd August 1990 and the Bench further ordered that a copy of the order passed on 26-6-1990 be sent to the Collector of Central Excise, Indore and to the Chief Departmental Representative, CEGAT by name to ensure that "such lapses do not occur in future, and the valuable time of the Bench should not be wasted". On 3rd August, 1990 the matter was adjourned on the request of Shri K.G.Seth, Advocate for the respondents and thereafter the effective hearing took place on 13th Nov. 1990 when it was brought to the notice of the Bench by

Shri M.S. Arora that two more duplicate appeals have been filed against the same order and the appeals were listed for 14th Dec.

1990 and these matters were taken up on that date. On 14-12-1990 again a request was made for filing of an affidavit in support of the stay application for rectifying the defect. In the interests of justice the matter was adjourned to 2-1-1991 and on 21-1-1991 Shri R.M.Ramchandani, learned SDR appeared and requested for adjournment for filing the affidavit of the Collector. For the appellant, there was a direction that the affidavit should be filed by 20th of February, 1991 and the matter was adjourned for today i.e. 20-2-1991. The Assistant Collector has sent a typed and verified affidavit with a letter of authorisation by the Collector authorising the Assistant Collector (Legal) to appeal to the Tribunal. In pursuance the affidavit dated 4th February, 1991 was received in the Registry on 5th February, 1991 with a covering letter by Speed Post.

2. At the outset of the hearing the Bench pointed out that the matters are coming up for hearing since June 1990 and the appellant is taking the things in a most careless and casual manner. After such a gap of time, the Asstt. Collector (Legal) has filed an affidavit which is unattested and in the eyes of law it is a statement purported to be an affidavit. Shri Ramchandani, learned SDR stated that he had written a letter to the Collector in this regard on 31-6-1991. In spite of his best efforts the affidavit has not been filed by the Collector. He pleaded that the statement filed by the Asstt. Collector may be accepted. Shri K.G. Seth, learned Advocate, who has appeared on behalf of the respondents stated that in terms of sub-rule (6) of Rule 28, by no stretch of imagination, the statement filed by the Asstt. Collector can not be treated as an affidavit. The stay application being defective should be dismissed.

3. We have heard both the sides and have gone through the facts and circumstances of the case. Before coming to any conclusion for the proper disposal of the present stay application, we feel that relevant portion of Rule 28 of the CEGAT (Procedure) Rules is reproduced below: - "Rule 28(4) - The contents of the application shall be supported by an affidavit sworn to by the appellant or his duly authorised agent".

The statement filed by the Assistant Collector purported to be an affidavit is also reproduced below: - I, Neerja Shah, Assistant Collector (Legal), Central Excise do, hereby solemnly affirm and state as under : - 1. I am the authorised officer of the appellant above named and conversant with the facts of the case and therefore competent to swear this affidavit.

2. I say that the facts are true to my knowledge while the rest of paragraphs are by way of submissions.

3. The annexures to the applications are true copies of their respective originals." In terms of Code of Civil Procedure, 1908 (amended in 1976) the affidavit has to be sworn before an oath commissioner or a Notary Public. Section 139 of the Code of Civil Procedure, 1908 is reproduced below : - "S. 139. Oath on affidavit by whom to be administered - In the case of any affidavit under this Code - (a) any Court or Magistrate, or (Inserted by Act 104 of 1976, Section 46 [1-2-1977J ][(aa) any Notary appointed under the Notaries Act, 1952, or] (b) any officer or other person whom a High Court may appoint in this behalf, or (c) any officer appointed by any other Court which the State Government may administer the oath to the deponent.

Order 6 Rule 15 of the Code of Civil Procedure, 1908 is also reproduced below: - "Rule 15. Verification of pleadings - (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed".

"Rule 9. Form of affidavit in answer - An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may

require.

Rule 13. Affidavit of documents - The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein, mentioned he objects to produce and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require." In view of the above discussion, we hold that the so called affidavit which is in fact in the nature of a verified statement cannot be treated as an affidavit. The Stay applications being defective are dismissed.

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