

**Prestcon Vs. Collector of Central Excise**

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

**Decided On :** Oct-19-1995

**Reported in :** (1996)(82)ELT305TriDel

**Appellant :** Prestcon

**Respondent :** Collector of Central Excise

**Judgement :**

1. Heard Shri K.A. Sindhi, learned Consultant. Shri K.A. Sindhi admitted that the present stay application has not been filed in respect of the order-in-appeal No. 39/94 (43-Raj.) CE Collr. (A) AHD dated 24-2-1994 though it has been mentioned so in column No. 2 of EA-3 form - memorandum of appeal. Clarifying, he submitted that so far as demand under that order of the Collector (Appeals) is concerned, the appellants have already paid Rs. 943/- but his grievance was that in the other appeal filed by the assessee before the Collector (Appeals) (F. No.V2 (68)16/RAJ/94) against the order-in-original No. 37/93, dated 25-11-1993 of the Assistant Collector, an application for stay under Section 35F was moved which was rejected by him vide stay order No.9/95, dated 10-7-1995. He admitted that no appeal has been filed against the said stay order.

2. Shri G.D. Sharma, learned JDR stated that the appeal is not maintainable against any interim stay order passed by the Collector (Appeals) before this Tribunal as held by this Tribunal in the case of International Computers Indian Manufacturer Ltd. v. Collector of Central Excise, Bombay Motilal and Company v. Collector of Central Excise, Thane reported in 1987 (31) E.L.T. 517.

3. The learned Consultant while admitting that no appeal has been filed against the said stay order went a little further to say that even when no appeal is filed against the said stay order, this Tribunal has ample power under Section 35F of the Act in any appeal pending before the Collector (Appeals) - a submission which in itself sounds awkward on the face of it. However, since the learned Consultant insisted to consider his submission, we, after going through the provisions of Section 35F, find that the language used in the Section i.e. "Where in any appeal under this Chapter, the decision or order appealed against relates to any duty..." itself indicates that the assessee who is aggrieved with the order must first file the appeal before the Tribunal and thereupon, this Tribunal has got power to consider the stay application therein. Admittedly, the present appeal has not been filed against the said stay order but against the said stay order of the Collector (Appeals) under which they have already deposited Rs. 943/-.

4. In view of the above, the present application is not only frivolous but filed under the wrong conception of law leading to wastage of time of the Tribunal. However, if the assessee is aggrieved with the said stay order, he may file his appeal, if permissible under the law.

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