

Collector of Central Excise Vs. United Polymers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-27-1996

Reported in : (1996)(87)ELT493TriDel

Appellant : Collector of Central Excise

Respondent : United Polymers

Judgement :

1. These revenue appeals are directed against common Order-in-Original No. 79/CEX/1988, dated 16-3-1988 of Collector of Central Excise & Customs, Pune.
2. The respondents have moved the four indential Misc. applications to raise the preliminary objection that the review order passed in their case was time barred.
3. Arguing on these Misc. Applications the Id. Advocate for the respondents submitted that under Section 35E(1) the Board can review the order of the Collector of Central Excise but the same has to be done within one year under Section 35E(1) from the date of the decision or the order. In this case the adjudication order was issued on 16-3-1988 by Collector of Central Excise, Pune while it was attested by his Superintendent on 14-3-1988 and was stencilled on 10-3-1988. The Collector of Central Excise, therefore, must have signed the order prior to 14-3-1988. Since the review order issued by the Board is signed on 15-3-1989 and also issued on that date, the decision was taken after more than one year and, therefore, the Review order itself is bad in law and on this count the appeals are not maintainable. In this connection, he cited the case of Collector of

Central Excise v. M.M. Rubber Co. -1991 (55) E.L.T. 289 (SC) where the Apex Court has held that Limitation of one year from the date of the decision or order has to run from the date of signing of the decision or order by the concerned authority. But in case of the party seeking appellate remedies, limitation is to run from the date of communication to him of the decision or order or the date of its pronouncement or publication.

4. The Id. DR submits with reference to earlier request made for adjournment of the case for submitting the case records for checking the actual dates on which the order was signed by Collector, that he has made all efforts to get these records by writing to Board's office, Collector of Central Excise, Pune and Sr. Departmental Representative, Bombay and inspite of his sincere efforts he has not been able to get the case records. He, therefore, submits that under these circumstances, he is not to request for further adjournment and prays that the case may be taken up for regular hearing at this stage itself since the only issue involved was the actual date when the order of the Collector was signed and for this he has not been able to get the case records. In regard to maintainability of the appeals he submits that the order was despatched on 16-3-1988 and the date for communication, therefore, is the date of the decision of the order and, therefore, the appeals are within time.

5. We have heard both sides. Since in the impugned order the Collector had not put the date below his signature we gave number of opportunities to the Revenue to produce original records for arriving at a decision on maintainability of the appeals. On 5-12-1995 a detailed order was passed and copy of this order-sheet was given dasti to both sides to obtain comments and original records on the next date of hearing. The matter was again adjourned on 4-1-1996. The Ld. DR produced a telex message to seek adjournment by a fortnight so that records may be produced. The case was again adjourned to 7-2-1996 to enable the Ld. DR to seek the original records. We note that Ld. DR fairly concedes his inability to produce the case records inspite of his sincere repeated efforts to seek the records and has no objection in taking up this matter for final decision.

6. We note that Collector of Central Excise has not put any date below his signature in the impugned order. There is, however, a remark "Attested" signed by R.P. Karyakarte, Superintendent (Adj.), Central Excise & Customs Hdqrs., Pune dated 14-3-1988 at the bottom. There is also endorsement at the bottom "More/10388/" which the Ld. Advocate submits is the date the order was stencilled. We note that CBEC's order for review is dated 15-3-1989 and this Review Order is signed by Member, CBEC on 15-3-1989 itself. Since impugned order was attested on 14-3-1988 we have necessarily to presume that it was signed on that date, or any date prior to that date, since the Department has not put in any evidence in rebuttal inspite of series of opportunities given to them precisely for this purpose. Since the order at the latest could have been signed on 14-3-1988 a Review Order signed on 15-3-1989 was clearly beyond one year, though by an extremely thin margin of one day.

In regard to date of decision or order in such cases the Hon'ble Apex Court in the Case of Collector of Central Excise v. MM. Rubber Co.

-1991 (51) E.L.T. 289 (SC) has held that in powers of suo moto review by Central Board of Excise and Customs and Collectors to direct filing of departmental appeals/applications - Limitation of 'one year from the date of the decision or order' is to run from the date of signing of the decision or order by the concerned authority. In that case a plea had been pressed by the appellants/Revenue that mere writing an order in file kept in the office is no order in the eye of law in the sense of affecting the rights of the parties for whom the order is meant and that though the order of the adjudicating authority was made on 28-11-1994 a copy of the same was sent to the respondents only on 21-12-1984 and received by them on the very day and that therefore the limitation would start only at the earliest from 21-12-1984. Negating the contention the Apex Court distinguished two situations holding that limitation of one year from the date of the decision or order is to run from the date of signing of the decision or order by the concerned authority, but in case of the party seeking his appellate remedies, limitation is to run from the date of communication to him of the decision or order or the date of its pronouncement or publication.

Since the position in regard to date in such cases is settled by the judgment of the Apex Court we hold that in the circumstances the order of review was passed beyond the limitation period of one year. In view of this all the four appeals are not maintainable and are dismissed as such without going into merits. Misc. Applications also stand disposed of accordingly.

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