

Veekay Papers Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-01-1996

Reported in : (2004)(164)ELT308Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Veekay Papers

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant, who manufactures release paper, claimed exemption from payment of duty on the product under Notification No. 49/87-C.E., dated 1-3-1987 from 1987-88 onwards. In 1992, the department, as a result of testing the product, concluded that in view of the composition of the commodity, the product would not be classifiable for exemption under the notification. Notice was issued to the appellant, proposing denial of the benefit of notification. After considering the reply, hearing the appellant, the Assistant Collector passed orders denying the exemption. The appellant challenged this order before the Bombay High Court by a writ petition. The High Court, by its order, directed the Collector to call for and examine the record of the proceedings of the Assistant Collector in the present case and pass appropriate orders under Section 35E(2) of the Act. Accordingly, the Collector passed an order on 25-4-1994 holding that the order of the Assistant Collector was legal, proper and correct.

2. The appellant challenged this order, too before the Bombay High Court which in its order dated 18-9-1995 dismissed the writ petition with the following order : "Order passed by the Collector of Central Excise on 25th April, 1994 as Exhibit 'K' is passed pursuant to Order passed by this Court on 3rd February, 1994 in Writ Petition No. 135 of 1994.

An appeal lies against the Order under Section 35B of Central Excises & Salt Act, 1944. Since an alternate efficacious remedy is open to the Petitioners, no interference is called for in the Writ Petition." 3. The Departmental Representative raised the preliminary objection that this Tribunal does not have jurisdiction to entertain an appeal against the order of the Collector passed under Section 35E(2) of the Act. He contends that an order passed by the Collector (now Commissioner) is not among any of the orders which is specified in Sub-section (1) of Section 35B of the Act, as the one against which an appeal can be filed to this Tribunal. He contends that the Tribunal being creature of the Act, is bound by the provisions in the Act and it cannot exercise jurisdiction which it does not possess. He cites the judgment of the Supreme Court in *Union of India v. Kirloskar Pneumatic Co. Ltd.* - 1996 (84) E.L.T. 401 (S.C.) = 1996 (64) ECR 509 (S.C.) to say that this Tribunal cannot be directed to act contrary to the provisions of the Act.

4. In reply the Advocate for the appellant contends that this Tribunal cannot ignore the directions of the High Court to which it is subordinate in the judicial hierarchy. Section 35B of the Act specifies the orders against which an appeal can be filed by any aggrieved person : "(a) a decision or order passed by the Collector of Central Excise as an adjudicating authority; (c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Collector of Central Excise under Section 35, as it stood immediately before the appointed day; (d) an order passed by the Board or the Collector of Central Excise, either before or after the appointed day, under Section 35A, as it stood immediately before that day :". This section does not provide for an appeal to be filed against an order passed by the Commissioner under Section 35E(2); nor are that any other provisions in the Act enabling an appeal against such an order to be filed before this Tribunal. It therefore appears to us that this Tribunal has no

jurisdiction to hear an appeal against an order passed under Section 35E(2) of the Act, in the absence of any provision in the statute to this effect. However, this appeal has been filed consequent upon an order passed by the High Court. As the advocate for the appellant rightly points out, this Tribunal, which is located within the jurisdiction of the High Court as is the appellant, is bound to follow the orders of the High Court, as required by judicial propriety.

(It may also be noted that in the course of hearing, we suggested to both the parties that, in view of the position it appears to us, it might be desirable to approach the High Court, for passing appropriate orders clarifying the matter, but there has been no response to the suggestion). Therefore, irrespective of our reservations, we have decided to proceed to hear the appeal.

5. There is a delay of 459 days in filing the appeal. The advocate for the appellant contends first that since the appeal was filed within three months from the date of the High Court's order on 18-9-1995 directing the appellant to file the appeal it is within time. This contention is not acceptable. The High Court in its order did not say that if the appeal was filed within three months it should be treated as on time. The appeal is against the order dated 25-4-1994 (stated to have been communicated on or about 7-5-1994) of the Collector and time limit of three months for filing the appeal has to be reckoned from the date of communication of that order.

6. The contention that the order impugned in the appeal is erroneous, improper, arbitrary and has not been in conformity with the principles of natural justice is no ground for condonation of delay. However improper or incorrect the Collector's order may be, it does not explain the appellant's delay in filing the appeal.

7. It is next contended that the Advocate for the appellant requested the Collector after he had passed the order not to implement it because it was erroneous, void and contrary to law and if this was not done the appellant would adopt contempt and other proceedings. We fail to see how this acts as an explanation for condonation of delay. It was open to the appellant at any time to adopt any proceedings that it felt appropriate in order to secure justice, there is not even an attempt to explain it.

8. It is next contended that the order of the Collector was not implemented for more than a year and a half and that therefore there was no cause for the appellant to feel aggrieved. We are unable to see how this advances the appellant's case. We are not aware of any view judicially held, nor has the Advocate for the appellant cited any such decision to support the proposition that the date of filing the appeal must be reckoned from the date on which the appellant feels himself aggrieved. Indeed, such a view would be self defeating and could, in some situation, render the appellate remedy infructuous.

9. It is next contended that the Collector's order did not contain a preamble indicating the appellate authority and that since the appellant's statutory and constitutional rights were violated, it approached the High Court. The answer to this would be that nothing prevented the appellant in filing an appeal before this Tribunal in time even in the absence of a preamble to that effect in the Collector's order, if it felt that was the right course of action. We are therefore not satisfied that the appellant was prevented from filing the appeal within the time and decline to condone the delay. The appeal is therefore barred by limitation and is dismissed.