

COLLECTOR OF CENTRAL EXCISE, CALCUTTA

v.

BERGER PAINTS INDIA LTD.

MARCH 19, 1990

[SABYASACHI MUKHARJI, CJ AND M.M. PUNCHHI, J.]

Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982: Rule 9(2)—Customs, Excise and Gold (Control) Appellate Tribunal—Appeal—Documents to accompany Memorandum of Appeal—Appeal filed pursuant to general authority given by Collector and order passed by Collector (in office note-sheet) without referring to any specific officer—Whether appeal filed in compliance with Rules—Purpose of the Rule explained.

Rule 9(2) of the Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 provides that an appeal filed under the direction of the Collector or the Administrator shall be accompanied by an attested copy of the order containing such direction. Pursuant to a general authority and an order of the Collector (on the file note-sheet) the appellant filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal which dismissed it by holding that it was not in consonance with Rule (2). Hence this appeal by the Revenue.

Setting aside the order of the Tribunal and disposing the appeal, this Court,

HELD: 1. Having regard to the purpose of the rules namely, to ensure that there was an application of mind to the points in respect of which the question for filing an appeal arose and that the appeal was duly authorised by the Collector, and was filed by the person authorised by the Collector in order to ensure that frivolous and unnecessary appeals are not filed, it must be held that in the present context and in view of the terms of the rules and the purpose intended to be served, the appeal was competent and was duly filed in compliance with the procedure as enjoined by the rules. The rules were to carry out the purposes of the Act. Therefore, the Tribunal was in error in dismissing the appeal. [1030D-F, G]

2. The matter is remanded to the Tribunal for consideration of the Appeal on merits. [1030H]

A **CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4447-48 of 1988.**

From the Judgment and Order dated 10.11.1987 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/Stay/No. 45/87-A & E/Appeal No. 188 of 1987-A. (Order No. B 681 & 682 of 1987-A.

Soli J. Sorabjee, Attorney General, Ms. Nisha Bagchi and Mrs. Sushma Suri for the Appellant.

Debi Pal and P.K. Chakraborty for the Respondent.

C The Judgment of the Court was delivered by

D **SABYASACHI MUKHARJI, CJ.** This is an appeal under section 35L(b) of the Central Excises & Salt Act, 1944 (hereinafter called 'the Act'). The appeal by the appellant before the tribunal was dismissed on the ground that provisions of rule 9(2) of the Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 had not been complied with. The documents which are to accompany the memorandum of appeal are prescribed by rule 9 of the said rules which provides as follows:

E "9(1) Every memorandum of appeal shall be filed in quadruplicate and shall be accompanied by four copies (at least one of which shall be a certified copy) of the order appealed against and where such order is an order passed in appeal or revision, four copies (at least one of which shall be a certified copy) of the order appealed against and where such order is an order passed in appeal or revision, four copies (at least one of which shall be a certified copy) also of the order of the adjudicating authority.

G (2) In an appeal filed under the direction of the Collector or the Administrator, the memorandum of appeal shall also be accompanied by an attested copy of the order containing such direction."

H The tribunal was of the opinion that the purpose and the spirit of rule 9(2) aforesaid was to ensure that the appeal was authorised by the collector to be filed. Our attention was drawn to the authority in the instant case, which was annexed to the further affidavit filed in these proceedings. The said authority dated 24th September, 1986 read as follows:

"I hereby authorise Assistant Collector (Tribunal & Review, Collectorate of Central Excise, Calcutta-II, Calcutta, to act on my behalf in the matter of filing appeal/applications/cross-objections/statement of reference before the Customs, Excise & Gold (Control) Appellate Tribunal/Collector (Appeals) in terms of Section 35B(2) and 35B(4), 35B(5), 35E(2), 35E(4), 35G(1) and 35G(2) of the Central Excises & Salt Act, 1944 and Section 81(3), 81(5), 81(6), 82(2), 82(4) and 823(1) & 823(2) of Gold (Control) Act, 1968."

Pursuant to this authority the appeal was filed, and our attention was also drawn to the orders passed by the Collector in respect of this specific appeal. The relevant portion of the same may be noted from the Order sheet. The note dated 4th December, 1986 reads as follows:

"Under the O/A date 14.8.86 as at page—19/C, Collector (Appeals) has set aside the O/O of the Divisional A.C. (Vide P-197/C of linked file marked F/A). In the O/O the AC, CE, Howrah, South Division has disallowed abetment on account of 1) Special Rebate on Addl. Trade Discount and 2) cost of secondary packing purported to be used for protection and to facilitate transportation for reasons stated in detail in the adjudication order.

Collector (Appeals) has, however, allowed the assessee's appeal on the ground that arguments put forward by the Asstt. Collector for disallowing the party's claim as not tenable.

In view of Supreme Court's Judgment dated 7.10.83 in the case of *M/s. Bombay Tyre International v. U.O.I.* and clarificatory Order date 14/15.11.83, it appears that the O/A passed by the Collector (Appeals) is not legal and proper and appeal to CEGAT against the same may be considered. The arguments advanced by the Asstt. Collector in her O/O dated 28.2.86 (pages 161-197/C of linked file) portions marked 'X' & 'Y' at Pages 171-173 & 163-165/C of linked file may very well form our grounds of appeal as well.

Submitted for consideration please."

A Thereafter, it appears that the Collector desired to have a look on the judgment in Godfrey Philip's case, and following are the orders noted by the Collector:

"Godfrey Philips Judgment of the Supreme Court may be perused in ELT placed below. (P=306 of Oct. 1985 issue)."

B

"Seen the judgment. This judgment covers a different material namely cigarette. For a classification from CEGAT. We can appeal on this issue. However, Collector may kindly see the side linked portions of page 323 of the book."

C

The tribunal was of the opinion that there was nothing in the rules to justify acceptance of the kind of general authorisation or the notesheet orders which authorised filing of appeal without referring to a specified officer as being in consonance with rule 9(2) of the said rules.

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Having regard to the purpose of these rules as we conceive it, namely, to ensure that there was an application of mind to the points in respect of which the question for filing an appeal arose and that the appeal was duly authorised by the Collector, and was filed by the person authorised by the Collector in order to ensure that frivolous and unnecessary appeals are not filed, we are of the opinion that in the present context and in view of the terms of the rules and the purpose intended to be served, the appeal was competent and was duly filed in compliance with the procedure as enjoined by the rules. It has to be borne in mind that the rules framed therein were to carry out the purposes of the Act. By reading the rules in the manner canvassed by Dr. Pal, counsel for the respondent, before us which had prevailed over the tribunal, in our opinion, would defeat the purposes of the rules. The language of the relevant Section and the rules as we have noticed, do not warrant such a strained construction.

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In the aforesaid view of the matter we are of the opinion that the tribunal was in error in dismissing the appeal on the ground that it did. In the premises, the judgment and order of the tribunal cannot be sustained. We accordingly set aside the judgment and order of the tribunal dated 10th November, 1987. In as much as, however, the tribunal has not disposed of the appeal on merits, we remand the matter to the tribunal for consideration of the appeal on merits and in accordance with law. The appeal herein is disposed of as aforesaid.

H

T.N.A.

Appeal disposed of.