

Cc Vs. Candid Enterprises

Cc Vs. Candid Enterprises

SooperKanoon Citation : sooperkanoon.com/11062

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-16-1997

Reported in : (1997)(70)LC514Tri(Mum.)bai

Judge : V T K.S., G Srinivasan

Appellant : Cc

Respondent : Candid Enterprises

Judgement :

1. This is an application for condonation of delay of 1 year 5 months and 5 days in filing the appeal which has been preferred by the Commissioner of Customs, Mumbai against the captioned order of the Commissioner of Customs (Appeals) Mumbai. The impugned order was communicated on 14.6.1995. The due date for filing the appeal, therefore, expires on 14.9.1995. The appeal was actually filed in the Registry on 19.2.1997.

2. Arguing on the application, the Id. SDR Shri K.M. Mondal submitted that the impugned order was implemented under bona fide belief that the facts and documentary evidences taken into consideration in passing the order were acceptable and authentic. It was submitted that investigations conducted by the Central Excise intelligence unit of the Customs, following an intelligence gathered in the month of November 1996 revealed that the impugned order had been obtained by misrepresentation of facts and on documents of questionable veracity.

The Id. SDR pointed out that the intelligence received was developed and investigation carried out in right earnest without loss of time and the appeal was preferred and filed expeditiously thereafter. The whole exercise took time between 1.11.1996 to 18.2.1997. There is thus no negligence on the part of the department. The appeal has been filed with due diligence. It was further argued that the condonation of delay in filing the appeal, in the circumstances, would be in the larger public interest as the issue has recurring and substantial revenue implication. The Id. SDR cited and relied upon the Supreme Court decision in the case of State of Haryana v. Chandra Mani and Ors. 1996 (64) ECR 15 SC. The Supreme Court had held that when the State is an applicant, praying for condonation of delay, certain amount of latitude is not impermissible. The expression "sufficient cause" should be considered with pragmatism in a justice-oriented approach because if the appeals brought by the State are lost for such default, no person is individually affected, but what in the ultimate analysis suffers, is public interest. The Id. SDR also cited the Supreme Court decision in the case of State of U.P. v. Harish Chandra 1997 (69) ECR 243 (SC) for proposition that in case of condonation of application by the Government Department having regard to the very manner in which the bureaucratic process moves, if the case deserves merit the Court should consider the question of condonation from that perspective. But in this case, the Id. SDR urged that from the time of receipt of intelligence to the filing of the appeal, the department had acted expeditiously. It was pleaded that larger public interest will suffer, if delay, in this case is not condoned. The Department could obtain evidence to show that the respondents herein had misused the duty free import facility against the value based advance licence under the duty exemption entitlement scheme. Therefore, the Id. SDR, argued that the delay in filing the appeal should be condoned and the matter may be remanded to the Commissioner (Appeals) to consider the issue afresh in the light of the fresh evidence that the department has since obtained.

3. The Id. Sr. Counsel Shri M. Chandrasekharan appearing along with the Id. Counsel Shri Anil Balani, contended that the ground on which the condonation is sought is that the respondents have manipulated the documents on the basis of which they had obtained the favourable order.

He argued that in fact the ground for condonation of delay and the grounds on merits in the appeal itself are the same. The Id. Sr.

Counsel urged that fraud has to be established by evidence and it cannot be arrived at on the basis of prima facie view by the Tribunal.

It was further pointed out by the Sr. Counsel that the Commissioner (Appeals) in the impugned order has not only relied upon the documents in dispute but has also relied upon the order of the Additional Commissioner of Customs, Mumbai in the case of M/s. Vipro Ltd., wherein the same chief chemist's opinion regarding the materials imported was accepted and acted upon. The reference to this order of the Additional Collector is S/16-DEEC-205355/94 Gr. 7 4. The submissions made by both the sides have been carefully considered. The time within which the appeal ought to have been filed expired on 14.9.1995 in this case. The appeal was actually filed only on 19.2.1997. Admittedly, the order-in-appeal was implemented all along from 14.9.1995 till the end of October, 1996. The receipt of intelligence by the Customs House indicating the misrepresentation of facts by the respondents occurred in November 1996, which is much after the time limit for filing the appeal against the Commissioner (Appeals) order had expired. The event which culminated in filing the appeal was the receipt of the intelligence. This event itself had occurred after the time limit for appeal had expired. In such a situation, it has been held by the Supreme Court in the case of Ajit Singh v. State of Gujarat that such an event occurring after the time limit for appeal has expired cannot constitute sufficient cause for condoning the delay. Paras 6 & 7 of this judgment are as follows, in which the Supreme Court had held that the party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. The Supreme Court held that no event or circumstance arising after the expiry of limitation can constitute such sufficient cause. It may be mentioned that in that case also State of Gujarat had filed the appeal before the High Court and sought condonation of delay which the High Court had granted. The Supreme Court, however, held that the High Court erred in condoning the delay.

At the outset, it is urged by learned Counsel for the appellants that the High Court erred in condoning the delay in filing the appeal, and the appeal should have been dismissed as barred by limitation. We have examined the facts carefully. It appears that initially the State Government took a decision not to file an appeal and it allowed the period of limitation to lapse. Subsequently, on certain observations made by the High Court while considering a revision petition by Bhulabhai that it was a fit case where the State Government should file an appeal and on notice being issued by the High Court to the State Government in the matter, the appeal was filed. It was filed three months after limitation had expired. A faint attempt was made to show that when the initial decision was taken not to file an appeal all the papers had not been considered by the department concerned, but we are not impressed by that allegation. The truth appears to be that the appeal was not filed at first because the State Government saw no case on the merits for an appeal, and it was filed only because the High Court had observed-and that was long after limitation had expired-that the case was fit for appeal by the State Government. Now it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation.

In the present case, there was no such cause, and the High Court erred in condoning the delay.

It is pointed out that the High Court could have sent for the record in the exercise of its revisional jurisdiction and examined the case. That is quite another matter and raises other questions. We are concerned here with the question whether the delay in filing the appeal could have been condoned.

5. The ratio of the Supreme Court decision is applicable in this case as noted above because the event or circumstance was the receipt of the intelligence which occurred much after the limitation period for appeal had expired. It is also not possible and in order for this Tribunal to look into the nature of the grounds taken that the favourable order had been obtained by documents which are of questionable veracity and the Tribunal cannot on that basis take a view in favour of condoning the delay because that would form the very crux of the case against the respondents now set up. Even if a prima facie view is expressed by the Tribunal, it will make the proceedings before the Commissioner (Appeals) ineffective as that authority would certainly be influenced by the views expressed by the Tribunal. In this context, it is also useful to bear in mind the general principle regarding the condonation of delay which is that a litigant should not be easily permitted to take away the right which has accrued to its adversary by lapse of time.

6. In the result, we are inclined to hold that this is not a fit case for condoning the delay of over one year in filing the appeal by the Commissioner. The COD application is, therefore, rejected.

7. Consequently, the appeal is also dismissed on the ground of limitation.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com