**Ram Kumar Industries Vs. Commissioner of Central Excise and S.T**

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**SooperKanoon Citation** : sooperkanoon.com/1149467

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

**Decided On :** Apr-03-2014

**Judge** : The Honourable Mr. H.K. Thakur, Member (Technical) &Amp; the Honourable Mr. M.V. Ravindran, Member (Judicial)

**Appeal No.** : Appeal No. E/13854 of 2013-DB (E/COD/11135 of 2014, E/Stay/13570 of 2013) (Arising Out of: Order-in-Appeal No.RS/86-87/SRT-II/07 dt. 26.2.2007)

**Appellant** : Ram Kumar Industries

**Respondent** : Commissioner of Central Excise and S.T

**Judgement** :

M.V. Ravindran, J.

1. This stay petition and appeal called out and we find that appellant has filed an application for condonation of delay.

2. Filtering out the unnecessary details, on perusal of records, we find that the appellant had filed a MISC application with the first appellate authority for granting him a certified copy of the Order-in-Appeal. This application was disposed off by the first appellate authority wherein he dismissed the application filed by passing an appealable order vide Order No.CCEA-SRT-II/SSP-97/u/s 35A (3) (Misc.Order) dt. 21.11.2012. Aggrieved by such order, the appellant preferred an appeal before the Tribunal and the Bench vide Final Order No.A 11001/WZB/AHD/2013, dt.

7.8.2013 disposed of the stay petition and appeal by directing the first appellate authority to grant a certified copy of the OIA dt. 26.2.2007. After receiving such certified copy from the appellate authority office, the appellant filed a stay petition and appeal before the Bench. The Registry directed the appellant to file an application for condonation of delay which has been filed and we take up the said application for disposal.

3. Learned counsel appearing on behalf of the appellant would take us through the entire case and submit that the appellant was not aware of the OIA No.RS/86-87/SRT-II/07 dt. 26.2.2007 as the factory was closed. It is his submission that before the first appellate authority, the appellant was represented by a counsel and the lower authorities have not endorsed the copy to the counsel. It is his submission that, if such a copy would have been endorsed, they would have been aware of an order which has been passed against them and would have taken steps to file an appeal before the higher forum. He would also submit that the lower authorities were in error in holding that the appellant had not taken the matter seriously. He would also submit that the appellant came to know about the passing of the order when the lessor of the property informed that the transfer cannot take place because of some liability with the Central Excise and Customs standing on appellant/applicants name. It is his submission that this is a case, fit for condoning the delay occasioned due to the reasons stated in the application as well as the affidavit, in support of the stay application. He would also submit that there are various decisions of the higher court wherein it has been held that the delay should be condoned and any assessee should not be deprived of his right to file an appeal.

4. Learned Departmental Representative, on the other hand, would submit that the impugned Order-in-Appeal dt. 26.2.2007 was despatched to the appellant in a manner as envisaged under the provisions/statute. It is his submission that the said order was received by the office of the Commissioner (Appeals), Surat-II. On receiving back the order, the office of Commissioner (Appeals) sent a copy of the OIA to the Range Superintendent to deliver the said order by pasting the order on the appellants last known address. In support of such a proposition, he took us on record the letter F.No.Commr. (A)/SRT-II/Misc./2007 dt. 10.8.2007 and the

Panchnama as done by the office of the Superintendent of Central Excise and Customs, Range III, Division III, Ankleshwar.

5. On careful consideration of the submissions made by both sides, we find that the entire argument of the applicants advocate seems to be that they had not received the copy of the OIA dt. 26.2.2007 and on being directed by the Tribunal, certified copy was given to them.

6. At the outset, we would have agreed with this submission made by the appellants advocate, however on deeper perusal of the records, we find that the said submission of the learned counsel needs to be discarded for more than one reason. Firstly, we find that the appellant/applicant was represented before the first appellate authority. When the matter was heard by him in appeal, the appellant had at that time also indicated the address of his factory which, he claims that, was closed in 2003. To our mind, if in 2007, when the matter was heard by the first appellate authority and the appellant was represented, why it was not brought to his notice is the question which was bothering us and on perusal of the records, it is seen that the appellant did not bother to appear before the first appellate authority nor before the adjudicating authority. In our view, the evidences produced by the learned D.R suggest that the department had tried to their level best to serve the copy of the OIA dt. 26.2.2007 to the appellant by sending the same under Regd.Post/AD. The letter dt. 10.8.2007, which is produced and taken on record, indicates that the said order was received by the appellate authority with the postal remark unit closed. We find that the first appellate authority has resorted to alternate mode of serving the order by pasting the order on the last known address of the appellant after drawing proper Panchnama which is on record and produced by Ld. D.R.

7. In our considered view, the appellant has not given any proper address to the lower authorities despite having knowledge that his factory is closed and also did not avail the opportunity of personal hearings, granted by the lower authorities, it seems that he had committed himself of not cooperating with the authorities. Secondly, having been not co-operative with the authorities, today, the appellant/applicant cannot claim that the delay in filing the appeal before the

Tribunal be condoned which, in our view, is a prayer which needs to be discarded for the reason that appellant was made aware of the Order-in-Appeal dt. 26.2.2007 by the department on pasting the same at his last known address. Thirdly, we find that the address given by the appellant in an appeal filed before the Tribunal is also the very same address wherein his factory was located to which the Order-in-Appeal was sent by post and it was received back.

8. In view of the foregoing, we are of the considered view that this is not a fit case to condone the delay in filing the appeal before the Tribunal.

The application for condonation of delay of more than 6/7 years is dismissed as devoid of merits. Consequently, the stay petition and appeal also stand dismissed.