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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-25-2000

Reported in : (2000)(118)ELT657TriDel

Appellant : Teksons Limited

Respondent : Commissioner of Central Excise

Judgement :

1. Both the captioned appeal and the appellants' application for condonation of delay (COD) have arisen for consideration together pursuant to Bench Order dated 10-5-1999.

2. The captioned appeal had been filed before the Tribunal's West Regional Bench (WRB) on 17/19-11-1992. A stay application had also been filed along with the appeal. The appeal was against the order of the Additional Collector of Central Excise dated 31-3-1992, which was received by the party on 6-6-1992. Though there was a delay in the filing of appeal, no COD application had been filed at that time. The WRB of the Tribunal, however, considered the stay application and granted waiver of pre-deposit and stay of recovery as per its order dated 2-3-1993. During the interregnum between the date of filing of the appeal with stay application and the date of passing of the stay order, a question had arisen as to whether appeals (like the captioned one) filed against adjudicatory orders of Additional Collectors of Customs and Central Excise passed before 14-5-1992 (the date on which the Finance Act, 1992 came into force) were maintainable before the Tribunal. This question was settled by the WRB as per Misc. Order dated 16-

12-1992 in a batch of 15 appeals including the instant appeal, whereby the Tribunal held that such appeals were maintainable before the Tribunal. The Bench, further, directed the Registry to post the appeals for hearing in their turn. It is pertinent to note that the said miscellaneous order was passed by the Bench without going into the Question of delay (if any) in the filing of the appeals.

3. As already noted, the present COD application has been filed by the appellants praying for condonation of a delay of 72 days involved in the filing of the appeal. The learned Advocate, Sh. M.A. Rangaswami appearing for the applicants/appellants have elaborately reiterated the grounds stated in the COD application. The facts and circumstances constituting the cause for the delay as submitted by the learned Counsel are as briefly stated below : Before 14-5-1992 (the date on which the Finance Act, 1992 came into force), appeals from orders of Additional Collector of Customs and Central Excise acting as adjudicating authorities lay to the CEGAT. This position changed with the amendment of the relevant provisions of law as brought about by the Finance Act, 1992 on 14-5-1992.

Accordingly, from 14-5-1992, the Additional Collectors came to be treated as lower in rank than the Collectors for purposes of provisions of appellate remedies under the Customs Act and the Central Excises and Salt Act and, consequently, appeals from orders of Additional Collectors/Additional Commissioners acting as adjudicatory authorities shall lie to Collector/Commissioner (Appeals) w.e.f. 14-5-1992. The impugned order was passed by the Additional Collector of Central Excise on 31-3-1992. But a copy of the said order was received by the party on 6-6-1992, i.e. after the coming into force of the Finance Act, 1992. The party bona fide believed that an appeal from such order could be filed before the Collector (Ap-peals) within the statutory period of limitation, and they did accordingly. The Collector (Appeals) passed order dated 14-10-1992 stating that the appeal was not maintainable before him and directing the party to file appeal before the Tribunal. The said order of the Collector (Appeals) was received by the party on 16-10-1992. Thereafter, the present appeal was filed before the WRB of the Tribunal on 17/19-11-1992 as already noted.

4. Apart from the above facts and circumstances, the learned Advocate has highlighted another ground of the COD Application, which is to the effect that the applicants had sincerely believed that the WRB had impliedly condoned the delay of filing of the appeal while considering the stay application on merits and granting an unconditional stay. A third ground stated in the application and reiterated by the learned Counsel is that the applicants have a very strong case on merits and that they acted with due diligence in the matter of pursuing the appellate remedy. The learned Advocate has, therefore, prayed for allowing the COD Application in the interest of justice.

5. The learned Departmental Representative, Sh. M.P. Singh has opposed the application vehemently, drawing support from the following decisions of the Tribunal :-(I) Shalimar Group Private Limited v. Collector of Customs 1990 (50) E.L.T. 390 (Tribunal).

(II) Krishna and Co. v. Collector of Customs 1995 (75) E.L.T. 589 (Tribunal).

In the former case, the preamble to the Order-in-Original had stated that an appeal therefrom lay to the appellate Collector. But the preamble was subsequently amended by a corrigendum stating that an appeal from the Order-in-original had to be filed before the Tribunal.

The question arose whether the period of limitation had to be reckoned from the date of communication of the corrigendum. The Tribunal, while dealing with such question, observed that the preamble to the Order-in-original was not a legal requirement nor was it a part of the adjudication order. This finding of the Tribunal, we observe, is rather against the Department. The learned Departmental Representative has drawn our attention to the preamble to the Additional Collector's order impugned in the present appeal and has pointed out that the preamble clearly guided the party to prefer appeal against the order before the Tribunal. The learned Departmental Representative has further submitted that, inspite of such clear guidance, the party filed appeal before the Collector (Appeals) instead of the Tribunal. Had the party been diligent in the matter, they would have preferred their appeal to the Tribunal in the first instance itself, the learned Departmental Representative submits. We are, however, not in a position to

accept these submissions of the learned Departmental Representative, in view of the above finding of the Tribunal in the case of Shalimar Group Private Limited (supra). The learned Departmental Representative has now relied on certain other findings of the Tribunal in the context of COD Application in the case of Shalimar Group Private Limited (supra).

The Tribunal rejected the COD Application filed by the appellants in that case on the ground that the appellants had failed to prove certain facts constituting the cause of the delay in the filing of the appeal.

6. In the latter decision of the Tribunal in the case of Krishna & Co.

(supra) also, the preamble of the impugned Order-in-original had clearly indicated that the appeal lay to the CEGAT but the party had filed appeal against the said Order-in-original before the Collector (Appeals). Thereafter, they came to know that they had been pursuing a wrong remedy. They then filed their appeal before the Tribunal, which happened to be beyond the period of limitation. The Tribunal rejected the appeal as time-barred, holding that, unless there was a genuine mistake, the factum of the appeal having been filed before a wrong forum was no ground for condonation of delay in the filing of the appeal before the Tribunal. The learned Departmental Representative has heavily relied on this decision and has submitted that, in the instant case too, there was no genuine mistake on the part of the applicant, and, therefore, the COD Application is liable to be rejected.

7. The learned Advocate has, in his rejoinder, drawn our attention to the following case law :-(I) Standard Treads Private Limited v. CCE 1996 (83) E.L.T. 30 (Kerala) [In this case the Hon'ble High Court of Kerala held that a justice-oriented approach is needed in dealing with delay condonation applications.](II) Harsha Tractors Limited v. Collector of Customs 1989 (41) E.L.T. 8 (S.C.) [In this case, delay was condoned in the interest of justice, having regard to the possibility of the condition prevailing at the relevant point of time as urged by the Counsel.] The learned Advocate has, therefore, prayed for a justice-oriented approach in the matter and for the condonation of the delay of 72 days involved in the filing of the appeal.

8. We have carefully examined the rival submissions. We have also observed that there was a clear guidance in the preamble to the impugned order that an appeal from that order lay to the CEGAT. This by itself, in our view, cannot be a stumbling block on our way in the matter of considering the COD Application on the various grounds stated therein, which need to be considered in a justice-oriented manner. We need not restate the facts and circumstances which constituted the cause of the delay in the filing of the appeal in as much as the same are, materially, not disputed before us. We are of the considered view that in such circumstances, the delay of the appeal has got to be condoned in the interest of justice. Accordingly, we allow the COD Application and take up the appeal for hearing on merits.

9. The appellants were engaged in the manufacture of excisable goods falling under different chapters of the new Central Excise Tariff during the period of dispute (March, 1986 to February, 1987). They filed classification list effective from 1-3-1986 in respect of their products, viz. H.P. Hoses, L.P. Hoses and Push-Pull Coupling, which they classified under Tariff Sub-Heading 8431.00 as parts suitable for use solely or principally with the machinery of Heading Nos. 84.25 to 84.30, which attracted Central Excise duty at the rate of 20%. This classification was approved by the proper officer of the Department.

Lateron, the jurisdictional Additional Collector of Central Excise issued show-cause notice dated 14-2-1989 to the appellants alleging that they had contravened Rule 173B of the Central Excise Rules deliberately with intent to evade payment of duty by describing their products as above instead of describing them under Tariff Sub-Heading 4009.92 as tubes, pipes and hoses of vulcanised rubbers, other than hardened rubber, with or without their fittings (for example, joints, elbows, flanges) designed to perform the function of conveying air, gas or liquid, which would have attracted Central Excise duty at 30%. The show cause notice, further, proposed to recover an amount of Rs. 3,23,167/- as differential Central Excise duty allegedly short-levied during the period March, 1986 to February, 1987, invoking the extended period of limitation under Section 11A(1) of the Central Excises and Salt Act. The notice also contained a proposal for imposing penalty on the party under Rule 173Q of the Central Excise Rules. The appellants replied to the show cause notice, pleading that there was no fraud, collusion or mis-statement or suppression

of facts on their part to call for invocation of the extended period of limitation under Section 11A(1) ibid', the classification list was approved by the proper officer after thorough examination of their product; a revised classification list was filed on 1-4-1987 (classifying the product under Tariff sub-heading 4009.92 not on their own but at the instance of the Department as per their letter dated 25-3-1987; and that the allegation of deliberate misdescription of the product in the classification list with intent to evade payment of correct amount of duty as raised in the show cause notice could not be sustained in as much as there was much confusion in the Department themselves with regard to the correct classification of the product. The appellants thus contested the proposed action of the Department and requested to drop the proceedings against them. The dispute was adjudicated upon by the Additional Collector of Central Excise who, by the impugned orders held that the appellants product appropriately fitted into Tariff sub -heading 4009.92 of the Central Excise Tariff. The lower authority further held that the description of the product by the appellants under Tariff sub-heading 8431.00 was a mis-statement intending at wrong classification. The lower authority, therefore, confirmed the demand and imposed penalty of Rs.l lac on the party. It is this order of the Additional Collector which is under challenge in the present appeal.

10. We have carefully examined the impunged order, the show-cause notice, the reply thereto and connected records of the case. We have also heard the learned Counsel for the appellants and the learned Departmental Representative for the respondent/Revenue.

11. The learned Counsel has submitted that the entire demand of duty as proposed in the show-cause notice is barred by limitation. The classification list filed by the appellants w.e.f. 1-3-1986 classifying their product under Tariff sub-heading 8431.00 had been duly approved by the proper officer of the Department after satisfying himself of the correctness of the same under Rule 173B of the Central Excise Rules.

The classification list so approved by the Department remained in force during the entire period of dispute. The show cause notice was issued as late as on 14-2-1989. The learned Advocate has further submitted that the impunged order

confirming the demand of differential duty by invoking the larger period of limitation on the ground of 'mis-statement with intent to evade payment of duty' cannot be sustained in so far as no reason has been stated to substantiate the said ground. The learned Advocate has, therefore, prayed for setting aside the impunged order and allowing the appeal inasmuch as none of the necessary elements [as laid down in the proviso to Section 11A (1) of the Act] required for invoking the larger period of limitation for demanding duty could be proved by the Department. The learned Departmental Representative has on the other hand, reiterated the observations and findings of the lower authority and has prayed for dismissal of the appeal.

12. The issue before us is as to whether the demand of differential duty as raised in the show cause notice dated 14-2-1989 is time-barred or not, having regard to the facts and circumstances of the case. We observe that the appellants' classification list effective from 1-3-1986 classifying the product under Tariff sub-heading 8431.00 was duly approved by the proper officer of the Department under Rule 173-B of the Central Excise Rules and that such classification list remained in force throughout the period of dispute. The party had paid appropriate duty on the basis of such classification list. The question whether the demand of duty in excess over the duty paid by the appellants at appropriate rate on the basis of the approved classification list is sustainable appears to have been settled squarely in favour of the assessees, by the judgment of a Constitution Bench of the Hon'ble Supreme Court in the case of Collector of Central Excise, Baroda v. Cotspun Limited 1999 (113) E.L.T. 353 (S.C.). The ratio of the Apex Court's decision is contained in Paragraphs 13 and 14 of the judgment, as extracted below :- "13. The levy of excise duty on the basis of an approved classification list is the correct levy, at least until such time as to the correctness of the approval is questioned by the issuance to the assessee of a show cause notice. It is only when the correctness of the approval is challenged that an approved classification list ceases to be such.

14. The levy of excise duty on the basis of an approved classification list is not a short levy. Differential duty cannot be recovered on the ground that it is a short levy. Rule 10 has then no application." 13. We find that the issue involved in the present appeal stands settled by the Apex Court's decision in the case of Cotspun

Limited (supra). Accordingly, we hold that the demand of differential duty raised by the Department against the party by way of the show-cause notice in question is barred by law. This being so, the imposition of penalty on the appellants by the lower authority also cannot be sustained. We, accordingly, set aside the impugned order and allow the appeal, with consequential reliefs (if any) to the appellants.