

Zenith Electronics Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-17-1984

Reported in : (1986)(25)ELT746Tri(Mum.)bai

Appellant : Zenith Electronics

Respondent : Collector of Customs

Judgement :

1. The prayer in this application is for condonation of delay in filing the Appeal C.D.(Bom) No. 687/84. The application is by a partner of M/s. Mulla & Mulla and Craigie Blunt & Caroe, Advocates for the Applicants.

2. Among other things it was stated in the application that the appeal was inadvertently filed in the Office of the Appellate Collector of Customs on 14-5-1984 alongwith the Solicitors' forwarding letter dated 14-5-1984. The mistaken presentation of the appeal in the Office of the Appellate Collector was sought to be explained by stating that inadvertently the applicants' Solicitors forwarding letter of 14th May, 1984 was addressed to the Appellate Collector of Customs. Accordingly, the applicants' Solicitors despatch clerk sent the appeal through the peon.to the Office of the Appellate Collector of Customs. It was further stated in the application that in or about the fourth week of July, 1984, the applicants' Solicitors intended to send the compilation to the Office of the Tribunal and at that time the Solicitors Assistant who was handling the matter found the inadvertent filing of the appeal in the Office of the Appellate Collector of Customs. Therefore, a letter was addressed to the Appellate Collector of Customs on 25-7-84 requesting

him to return to the applicants' Solicitors the memo of appeal for the purpose of being filed in the Office of the Tribunal.

However, the applicants' Solicitors subsequently felt that the proper procedure might be to request the Office of the Appellate Collector to forward the appeal to the Office of the Hon'ble Tribunal, a request to that effect was made to the Appellate Collector of Customs in the letter addressed to him by the applicants' Attorney on 7-8-84. It is then stated in the application that the applicant's Attorney however, received the entire memo of appeal on 10-9-84 and on the very next day i.e., 11-9-84 filed the aforesaid memo of appeal in the Office of the Tribunal. Thus, according to the applicants' Advocate there was sufficient cause for non presenting the appeal within the prescribed period and delay in filing the present appeal may be condoned.

3. After the application was partly heard on 30-10-84, Shri Taraporevala, learned Advocate for the applicants sought time to file an affidavit and to address further arguments. On 5-11-84 an Advocate by name Shri H.N. Vakil filed an affidavit. In his affidavit among other things the learned Advocate stated that he was working as an Assistant Solicitor in the employment of M/s. Mulla & Mulla & Craigie Blunt & Caroe, Advocates and Solicitors. He was enrolled as a Solicitor in April, 1983. He was aware that under the Customs Act, 1962 the appeal has to be filed within 3 months from the date of communication of the order and on the day he prepared the appeal he had several matters on hand to attend to and in haste and hurriedly, inadvertently he dictated a letter addressed to the Appellate Collector and forwarded the appeal on 14-5-84 through the despatch department instead of addressing it to the Registrar, Customs, Excise & Gold (Control) Appellate Tribunal. On 29-6-84 he went to U.K. for appearing Solicitors Exam, and as such, another Assistant Solicitor handled the appeal papers and during the 4th week of July, 1984, the said Assistant Solicitor found from amongst the papers a letter dated 14-5-84 addressed to the Appellate Collector, and therefore, on 25-7-84 a letter was dictated and addressed to the Appellate Collector of Customs" by his Senior Solicitor requesting the Appellate Collector to return the Memorandum of Appeal and Vakalatnama. But then that letter was not despatched as the Senior Solicitor wanted to be sure that the papers were sent to the Office of the Appellate

Collector and not to the Hon'ble Tribunal. Accordingly, the Senior Solicitor waited for him (deponent) to join the service which he did on 6-8-84. He further stated that on 7-8-84 he personally visited the Office of the Appellate Collector alongwith the duly signed copy of the letter dated 25-7-84 and handed over the said copy of the letter in the Office of the Appellate Collector and the said office handed over to him the relevant file containing the appeal which was numbered by the Appellate Collector. Thereafter, they informed this fact to the Senior Solicitor who noticing the fact of the appeal being numbered on the office folder, deemed it proper to return the same to the Office of the Appellate Collector. Therefore, he returned the said memo of appeal with the covering letter dated 7-8-84 to the Office of the Appellate Collector of Customs stating that due to inadvertence, the said memo or appeal was filed in his office and requested him to forward the said memo of appeal alongwith the copy to the Registrar of Hon'ble Tribunal.

It was then stated that after the receipt of the records from the applicants on 10-9-84, the appeal was filed in the Office of the Tribunal on 11-9-84 alongwith the application for condonation of delay.

Finally, he stated that due to bonafide mistake on his part, the appeal was filed the wrong authority, and he respectfully submits that his clients should not suffer for the bonafide and honest mistake on his part.

4. During the hearing of this application, Shri Taraporevala submitted that the order appealed against was communicated to the applicants on 27-2-84 and within the prescribed period of limitation, namely, within 3 months from that day the appeal had been filed. But unfortunately it was filed before the wrong forum by inadvertence. He further submitted that immediately on coming to know of the wrong presentation of the appeal in the last week of July, 1984, a letter was addressed to the Appellate Collector to return the papers and again by a letter dated 7-8-84 the Appellate Collector was requested to forward them to the Office of the Tribunal. But then the Collector (Appeals) refused to transfer them, but sent them to the Solicitors Office on 10-9-84 and on the very next day the appeal had been presented in the Office of the Tribunal. Thus, the delay in presenting the appeal was not intentional, it was by bonafide mistake. Further, Shri Taraporevala

submitted that the applicants, are innocent. They have entrusted the preparation and filing of the appeal to the Solicitors. The sin committed by the Solicitors should not be visited upon the innocent clients. In support of his plea, Shri Taraporevala relied upon the judgment of the Supreme Court reported in AIR 1981 S.C. page 1400 Rafiq v. Munshilal. From the said decision the Supreme Court observed: 'The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. May be that the learned Advocate absented himself deliberately or intentionally.

We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order.' 5. Shri Gidwani, learned Departmental Representative vehemently opposed this application. He contended that the applicants were communicated with the order appealed against on 27-2-84. They should have filed the appeal within 3 months thereafter i.e., on or before 26-5-84, but they had preferred the appeal on 11-9-84. Thus, there was a delay of 3 1/2 months and under law the applicants were required to explain each days' delay satisfactorily, and the applicants have failed to satisfactorily explain the inordinate delay. Shri Gidwani pointed out that according to the affidavit filed by the Advocate, another Assistant Solicitor had prepared an affidavit correcting certain statements made in the appeal on 10-7-84 and if only some enquiry had been made the said Assistant Solicitor would have known the wrong presentation of the appeal. Shri Gidwani further pointed out that as early as on 25-7-84 the Solicitors had come to know that the appeal had been made before a wrong forum, but till 7th August, 1984 no steps are taken either to request the Appellate Collector to send their appeal papers to the Office of the Tribunal or to return to them. It was only on 7th August a letter was addressed to the Appellate Collector to return the papers to them and on the same day they obtained the papers. But strangely instead of filing the appeal before the Appellate Tribunal they again filed it in the Office of the Collector (Appeals) and made a request to the Appellate Collector to forward the papers to the Tribunal. The matter according to Shri Gidwani does not

rest there. Till 10th September, the date on which they received back the papers from the Collector (Appeals) no efforts were made to approach the Collector (Appeals) either to return back to them or forward the papers to the Tribunal Office. There is total lack of bonafide on the applicants' Solicitors.

The Solicitors according to Shri Gidwani were totally indifferent and lack of diligence was also noticed. He contended that the Solicitors office functioned as a bureau-cractic office. Shri Gidwani submitted that the Solicitors who claims to know law cannot plead ignorance of the basic fact of the presentation of the appeal before a proper forum.

He was surprised at the indifference and bureaucratic attitude. Relying on the decision of the Supreme Court reported in 1962 S.C. page 361, Shri Gidwani submitted that in the absence of satisfactory explanation regarding each days' delay the application may be rejected. Shri Gidwani further submitted that the plea of the Solicitors that presentation before a wrong forum was by inadvertence cannot be believed. He contended that the procedural Rules required the applicants to send alongwith their appeal the demand draft of Rs. 200/-. The Solicitors did not send the demand draft alongwith their appeal to the Appellate Collector. This according to Shri Gidwani should not be the conduct of the responsible Solicitors. Finally, Shri Gidwani submitted that the decision relied upon by Shri Taraporevala is not applicable to the facts of the case. The applicants also had the responsibility to ascertain with their Solicitors as to whether their appeals had been filed or not. He, therefore, submitted that the application may be rejected.

6. Considered the submissions made on both sides and perused the records of the case. There is no controversy as to the date of presentation of the appeal before the Collector (Appeals). It was presented on 14-5-84 within the period of limitation. Though one may accept the statement made in the application that despatching clerk by reason of a forwarding letter was justified in despatching the appeal papers to the Office of the Appellate Collector, there appears no justification for the applicants' Solicitors not to take prompt action to rectify the mistake even though the mistake came to their notice on 25-7-84. It was stated in the japplicat-ion that Assistant Solicitors on 25-7-84 did prepare a letter requesting the

Appellate Collector to return the papers, but then the letter was not despatched till 7-8-84.

This delay was sought to be explained in the affidavit filed by Shri H.N. Vakil. In the affidavit it is stated that the Senior Solicitor wanted to be satisfied that the papers were sent to the Office of the Appellate Collector, and therefore, he waited for the deponent to join the service which he did on 6th August, 1984. It is not explained why the Senior Solicitor had such a distrust of his junior colleague. One cannot appreciate the attitude of the Senior Solicitor. As a matter of fact there was no need for the Senior Solicitor to wait for the deponent to join the duty for verifying the presentation of the appeal.

The facts narrated in the affidavit exhibits indifference on the part of the Solicitors. Shri Gidwani is right in contending that the responsible Solicitor have acted irresponsibly and there was lack of diligence and indifference on their part. No explanation is forthcoming in the affidavit as to whether 'any demand draft was sent alongwith the appeal. Apparently, it could not have been sent. If it had been sent that would have been also returned to the applicants. This fact again exhibits ignorance of the basic requirement of law.

7. Though there is much to be said against the manner in which this firm of Solicitors handled the case, I cannot accept the contention of Shri Gidwani that the applicants should have made enquiries with the Solicitors firm as to the filing of the appeal. Shri Taraporevala frankly conceded that the Solicitors firm did commit a sin, but he pleaded that the sin committed by them may not be allowed to be visited upon the innocent applicants. I he observation of the Supreme Court in Rafiq v. Munshilal equally applies to the facts of the present case.

Merely because the applicants' chosen Advocates were guilty of indifference the innocent applicants should not suffer injustice. I, therefore, allow this application and condone the delay and direct that the appeal be admitted.

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