Collector of Central Excise Vs. East Coast Paper Products (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-01-1985

Reported in : (1991)LC450Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : East Coast Paper Products (P) Ltd.

Judgement :

1. The Collector of Central Excise, Calcutta, has filed this appeal against the order passed by the Collector of Central Excise (Appeals), Calcutta, dated 30-8-1984. This appeal has been filed in the office of the Tribunal on 8-4-1985. An application for condonation of delay in filing the appeal has been filed. Shri Chatterjee, JDR, submitted that the delay was due to administrative reasons and requested the Tribunal to condone the delay. Shri N.C. Jain, Advocate, for the respondent, opposed the application for condonation.

2. We have given anxious consideration to the submissions. For a proper understanding of the question at issue certain dates have to be set out. The Order-in-Appeal is dated 30-8-1984. It was issued on 28-9-1984. It was received by the Collector of Central Excise, Calcutta-I Collectorate on 8-10-1984. As the matter related to Calcutta-II Collectorate it was sent to the applicant who received the same on 11-10-1984. The Applicant Collector called for the relevant record on 27-10-1984, after a delay of 16 days. The records were not received. A reminder appears to have been sent on 12-12-1984. The case records were ultimately received by the Applicant Collector on 15-1-1985. It is alleged that considerable

time was consumed to trace out the records at the Divisional level due to official routine. "A critical examination" of the Order-in-Appeal was undertaken and it was finally decided on 8-3-1985 to file an appeal before the Tribunal.

Further, time was taken for processing the appeal which was ultimately filed on 8-4-1985 before the Tribunal.

3. The above narration amply illustrates the leisurely and apparently casual manner in which the entire matter has been dealt with at the different levels of the Department. There is no explanation why there was delay in calling for the records initially. It is strange and surprising that two reminders had to be issued to the Divisional authorities for securing the records. Even after the receipt of the records considerable time has been taken to decide whether an appeal should be preferred. Thus we see that at every stage the Department has not realised the need and urgency to file the appeal in time. Section 35-B(5) of the Central Excises and Salt Act, 1944 enables the Tribunal to admit an appeal after the relevant period prescribed if it is satisfied that there was sufficient cause for not presenting the appeal within the period prescribed. Hence there must be clear and cogent explanation for every day's delay so that the Tribunal may be convinced that the delay was not deliberate but due to reasons beyond control.

From the facts set out above, we are satisfied that the inordinate delay at every stage particularly even after a decision to prefer an appeal was taken on 8-3-1985, indicates that the Department never realised the rigour of Section 35-B(5). We are not at all satisfied with the explanation given by the learned JDR, for the delay in filing the appeal. We are also fortified by the ruling reported in 38 S.T.C.538 (Hindustan Aeronautics Ltd. v. State of Orissa and Anr.) where the principles laid down in earlier case (Baldeo Lal Roy v. State of Bihar) (11 S.T.C. 104) for condonation of delay have been confirmed.

"...In order that one can claim to get the delay condoned, he must show by his conduct that he was diligent all along in taking appropriate steps and the delay was caused notwithstanding his due diligence. If, however, it appears that an applicant is not diligent but is guilty of laches and negligence and. does not take appropriate steps for pursuing his remedy till about the close of the period prescribed for an action to be taken, he cannot claim to have the delay condoned if per chance or by accident he happened to have exceeded the prescribed period in taking the proper steps ..." 5. When a statute prescribes a period of limitation it is not without any meaning and when the time prescribed for an action runs out, the adversary is entitled to assume that the decision in his favour has come to stand so that such party would work out his activities accordingly. We are not convinced that there is sufficient cause for not presenting the appeal within the period of 90 days from the date of receipt of the order by the Applicant Collector.

6. In the result the application for condonation of delay is dismissed.

As a consequence of this order, the Stay application as well as the appeal shall stand dismissed.