Assistant Collector, Central Vs. Kakkar Complex Steel Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-05-1985

Reported in : (1986)(7)ECC23

Judge : S Jha, H Syiem, K P Anand

Appellant : Assistant Collector, Central

Respondent : Kakkar Complex Steel Pvt. Ltd.

Judgement :

1. By this condonation of delay applications (133/85 and 134/85) the appellants pray for condonation of delay in filing Appeal Nos.

1392/85-B and 1330/85-B. This order will dispose of the two applications.

2. The two appeals are arising out of the same order-in-appeal dated 29th January, 1985 passed by the Collector of Central Excise (Appeals), New Delhi. According to the Memo of Appeal and the applications for condonation of delay the order was communicated to the appellant on 27th February, 1985. Appeal was filed to the Tribunal on 30th May, 1986. Parties agreed that the date of communication would be excluded in computing limitation. In this view the appellant could have filed appeals till 27th May, 1985. The appeals thus filed on 30th May, 1985 are time-barred by 3 days.

3. It might be stated that in the written reply to the application the respondents raised an objection that the date of communication, 27th February, 1985, shown in

the Memo of Appeal was the date of communication of the order to the Assistant Collector and time had to be computed with reference to the date of communication of the order of the Collector of Central Excise, Chandigarh. As this information was not available on record nor was the point made during arguments on 26th August, 1985 and the objection came to be noticed only when the orders (were) being dictated. Hearing was reopened for the purpose to get this information. Shri H.L. Verma, SDR representing the appellant was, by order dated 5th September, 1985, called upon to state the precise date of communication of the order to the Collector of Central Excise. In obedience to this direction, by application dated 18th October, 1985, Shri Sunil Rohtagi, JDR informed that the date of communication of the order-in-appeal is, as already set out, 27th February, 1985.

4. It might also be stated that identical applications for condonation of delay dated 27th May, 1985 presented on 30th May, 1983 only stated that the matter was under study by the Department and could not be filed in time due to this reason.

5. However, during arguments on 30th July, 1985, Shri S.C. Rohtagi, JDR wanted to submit the particulars of sufficient cause on the basis of which prayer for condonation of delay was made. Later, identical affidavits of Shri A.C. Joshi Assistant Collector, Central Excise, Pathankot were filed explaining the cause for delay and claiming that it was sufficient cause. According to this application Collector of Central Excise, Chandigarh accorded sanction under Section 35B(2) of the Central Excises & Salt Act, 1944 for filing appeals and authorised the Assistant Collector to file appeals. This file was received in the office of the Assistant Collector, Pathankot on 20th May, 1985 and by the dealing hand of the office on 21st May, 1985 the file was put up before the Superintendent (Technical) on 22nd May, 1985 for orders for getting the appeal papers photocopied in the market. On the same day the Superintendent (Technical) ordered that instead of photostat copies the papers should be got type-written on overtime. This typing work was done between 22nd May, 1985 to 25th May, 1985. 26th May, 1985 being Sunday was a holiday. The Assistant Collector, Central Excise, Pathankot was on leave and he resumed duty on 27th May, 1985.

Immediately thereafter he signed the papers in the evening of 27th May, 1985 and Shri Bikram Singh, UDC was deputed by the Assistant Collector on 28th May, 1985 in the morning to hand over the two appeals in the office of Registrar, CEGAT, New Delhi. The application or the affidavit do not spell out the time taken by Shri Bikram Singh to reach New Delhi from Pathankot but it can be presumed that the period between 28th May, 1985 to 30th May, 1985 i.e. the date of filing was taken in the journey.

6. Under Sub-section (3) of Section 35B the Collector of Central Excises could file appeal to the Tribunal within three months from the date on which the order sought to be appealed against was communicated to him. Under Sub-section (5) ibid, the Appellate Tribunal may admit an appeal after expiry of the said period if it is satisfied that there was sufficient cause for not presenting it within the said period. The question to be seen is on the facts aforesaid whether the appellant had sufficient cause for not presenting the appeal till 27th May, 1985 and whether the 3 days' delay should be condoned.

7. During arguments Shri H.L. Verma, SDR relied on the Supreme Court decision in State of Uttar Pradesh v. Bahadur Singh 1983 ECR 1556D (SC) and submitted that public interest must be considered before dismissing a delayed petition when the delay was justifiable. Shri B.N. Sharma opposing the application and the arguments submitted that by efflux of time a valuable right in favour of the respondent arose and this right arising in favour of the respondent should not be lightly disturbed.

Further no indulgence could be shown to the appellant merely because the appellant was Government.

8. On the facts the appellant was guilty of negligence because the papers instead of being type-written could have been photocopied. Even otherwise it was unbelievable that the matter would take three days for typewriting its volume being small. In his arguments Shri Sharma relied on the following decisions of the Tribunal: Shipping Corporation of India Ltd., Calcutta v. Collector of Customs, Calcutta Collector of Customs, Bombay v. Gujarat State Fertilizers Co. Ltd., Bombay Collector of Central Excise, Calcutta v. East Coast Paper Products (P.)

Ltd., Calcutta 9. The Supreme Court decision relied on by Shri Verma related to a writ petition for which there is no prescribed period for limitation. That may not strictly help the appellant. Gujarat State Fertilizers Co. Ltd. case , relied on by Shri Sharma, states that time-limit cannot be relaxed merely because the appellant is Government. In that case the delay was of the order of one month and nineteen days' and 38 days' delay had not been explained on any account. In East Coast Paper Products case there was delay at every stage and the Tribunal was not satisfied with the explanation for delay. In Shipping Corporation of India case a single Member Bench of the Tribunal declined to treat loss of papers as sufficient cause for delay in filing appeal and did not condone the delay.

10. Whether or not there was sufficient cause for not preferring appeal within time would depend on its own facts. It is not possible to lay down precisely what facts or circumstances would constitute sufficient cause. The calendar of the events as put by the appellant in (the) affidavit shows that prompt action was taken by the appellant for processing the papers for the appeal. It also appears that the memo of Appeal could not be signed by the officer authorised as he was on leave and he signed the same as soon as he returned from leave on 27th May, 1985 and resumed duties. It might be that with extra vigilance the Memo of Appeal could have been got signed by the Assistant Collector of some other area who might have been during the time the Assistant Collector was on earned leave authorised to discharge these duties. But merely because this thought did not occur to the subordinates it would not be correct to hold that there is inaction on the part of the appellant.

The facts on record show that the appellant cannot be said to be guilty of inaction or lack of bona fides. Besides, each day's delay has been explained. We are therefore satisfied that there was sufficient cause for the three days' delay in presenting the appeal.