Video Electronics Private Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-09-1985

Reported in : (1986)(6)LC694Tri(Delhi)

Appellant : Video Electronics Private

Respondent : Collector of Central Excise

Judgement :

1. An appeal, No. 548 of 1980-NRB, preferred by M/s. Video Electronics (P) Ltd., was dismissed by this Tribunal under its order dated 24.4.1984. The present application under Section 35G of the Central Excises and Salt Act (hereinafter referred to as the Act) is for referring to the High Court for questions, said to be questions of law, arising out of this order of the Tribunal. This application was received on 27.9.1985. Under Section 35G of the Act, the application for reference should be made within 60 days from the date of receipt of the order of the Tribunal under Section 35C, time in proper cases being extendable by a further 30 days. Since the present application was filed on 27.9.1985, though the order in appeal had been received on 7.5.1984, an application for condonation of delay has been filed.

2. The application for condonation of delay recites the facts on the basis of which condonation is sought for. It is stated that on receipt of the Tribunal's order on 7.5.1984, the applicants filed a Writ Petition in the High Court of Delhi on 28.5.1984 in which a stay application had also been filed and stay had been granted ex-parte, for vacating which an application was filed by the Revenue on

5.12.1984. It is further stated that the application for discharge of the, rule was rejected on 5.12.1984, and the Writ petition was then posted for hearing, and that on 29.7.85, the Writ petition was allowed to be withdrawn as the applicants could pursue the alternative remedy of seeking a reference of Questions of Law to the High Court. It is stated that in the order permitting withdrawal, the High Court was pleased to observe that the applicants had been prosecuting the Writ petition with due diligence. It is claimed that the period between the filing of the writ petition and the disposal thereof should be excluded in computing the period of limitation, and if so done, this application will be found to have been preferred within the extended period of 30 days and, therefore, the delay may be condoned. During the hearing it was pointed out that in respect of this extended period of 30,days after the expiry of initial 60 days, there are no averments to explain the delay between the date of disposal of the writ petition and the date of filing of this petition. Thereupon, the applicants filed an affidavit by the Secretary of the applicant company. It is stated in the said affidavit that on the disposal of the Writ petition the applicants had instructed their advocates to obtain a certified copy of the judgment and that though such a copy was obtained, it was misplaced in the office of the Advocate and could not be traced. It is further stated that the applicants subsequently obtained the, case papers from their Advocates (who were appearing for them in the High Court) and engaged another advocate, who had to study the records afresh, and that efforts were again made to obtain the certified copy issued earlier by the High Court, but the same could not be traced. It is claimed that in the above circumstances, the delay of 21 days beyond the initial period of 60 days may be condoned.

3. We have heard Shri M.A. Rangaswami, Advocate for the applicants, and Shri Shishir Kumar, Senior D.R., for the respondent Collector.

4. Under Section 35G of the Central Excises and Salt Act, an application for reference has to be filed within 60 days of the date, of receipt of the order under Section 35C. It is further provided that if the Tribunal is satisfied that the applicant was prevented by sufficient cause from presenting the application within the said period of 60 days, it may allow the application to be presented within a further period not exceeding 30 days. It is, therefore, seen that after the expiry of 90 days

from the date of receipt of order under Section 35C, no reference application can be entertained in any circumstance.

In the present instance, the applicants had received the order under Section 35C on 7.5.84. This application for reference had been received on 27.9.85, which is, admittedly, beyond 90 days from 7.5.84. That is why the applicants contend that the period between the date of their filing the writ petition and the date of disposal thereof by the High Court should be excluded in computing the period of limitation under Section 35G, and if so done, the present application would be found to have been presented within the 90 days mentioned in Section 35G. The provisions in the Central Excises & Salt Act do not contain any provision for such exclusion in computing the period of limitation. But Shri Rangaswami contends that such exclusion is permissible under the provisions of Section 14 of the Limitation Act, 1963. But the contention of the department is that the provisions of the Limitation Act do not apply to proceedings before this Tribunal under the Central Excises and Salt Act, and therefore, no such exclusion in computing the period of limitation, as put forward by the applicants, is permissible.

5. The primary question, therefore, for determination is whether it would be open to the applicants to have recourse to the provisions of the Limitation Act in the manner claimed by them. Shri Rangaswamy in this connection relies on the decision of the Supreme Court in res Commissioner of Sales-Tax v. Madanlal Das & Sons (1976) 38 STC 543 : AIR 1977 SC 523. He points out that in the said decision the Supreme Court had held that the provisions of Section 12(2) of the Limitation Act, 1963 can be relied upon for computing the period of Limitation prescribed for filing a revision petition under Section 10 of the U.P.Sales Tax Act, 1948, in respect of proceedings under that Act before the 3udge (Revision), Sales-tax. He, therefore, contends that the provisions of the Limitation Act would be applicable in respect of proceedings before this Tribunal also and, under Section 14 of the Limitation Act, the period between the date of filing of the Writ petition and the disposal thereof should be excluded in computing the period of limitation prescribed under Section 35G of the Central Excises & Salt Act.

6. It may be noted that on a reading of this decision of the,Supreme Court, it appears that the applicability of the provisions of the Limitation Act to proceedings before quasi-judicial authorities and Tribunals was not specifically contested by either party, and that the arguments had proceeded on the basis that the provisions would apply, but that the provisions of Section 12 (read with Section 29) would not apply in the circumstances of that case. It may be noted that there are other decisions of the Supreme Court which have specifically, and in clear terms, laid down that the provisions of the Limitation Act, 1963 apply only in respect of proceedings before Courts and not in respect of proceedings before quasi-judicial authorities, such as Tribunals etc. It has been observed in Nityanand M. Joshi v. Life Insurance Corporation of India (AIR 1970 SC 209) that it seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to Courts and the Labour Court is not a Court within the Indian Limitation Act, 1963". Again in the Commissioner of Sales Tax, U.P. v. Parson Tools and Plants (AIR 1975 SC 1039), it has been observed that the authorities functioning under the Sales-tax Act are merely administrative Tribunals and not Courts and Section 14 of the Limitation Act, therefore, does not in terms apply to the proceedings before such Tribunals. Recently also in the case of Sakuru v. Tanaji - AIR 1985 S.C. 1279 the Supreme Court has held that the provisions of the Limitation Act apply to proceedings before Courts only, and not to proceedings before quasi-judicial authorities. This Tribunal had also in Canara Workshop Ltd. Mangalore v. Collector of Customs, Madras 1983 (2) ETR 244 held that the provisions of the Limitation Act apply only to application or appeals before Courts and not to proceedings before special Adjudicating authorities. It is thus seen that when the Supreme Court had to specifically consider the question of the applicability of the provisions of the Limitation Act to proceedings before quasi-judicial authorities (as distinct from Courts) it had consistently held that the provisions of the Limitation Act would not apply to proceedings before such authorities. As far as the decision relied upon by Shri Rangaswami is concerned, it appears from the judgment of the Supreme Court that neither of the parties to the matter disputed the applicability of the provisions of the Limitation Act to proceedings before quasi-judicial authorities. The dispute appears to have been only whether in the circumstances of that case, and taking into consideration the provisions of the Act under which the

adjudicating authority was functioning, the particular provisions of the Limitation Act were applicable or not. As seen earlier, the latest judgment of the Supreme Court supported the contention of the department regarding the non-applicability of the provisions of the Limitation Act to proceedings before this Tribunal under the central Excises and Salt Act.

7. Shri Rangaswam however points out that the decision relied upon by him was by a bench of three Judges while the latest decision reported in AIR 1985 SC 1279 was by a bench of two 3udges. He, therefore, contends that this Tribunal is bound to follow the decision of the earlier Bench though the decision to the contrary may be later in point of time. The rule to be followed by subordinate authorities in case of apparent conflict between several decisions of the Supreme Court has been stated by the Supreme Court itself in the State of U.P. v. Ram Chandra Trivedi, (AIR "The proper course for a High Court in such a case, as observed by this Court in Union of India v. K.S. Subramanian (Civil Appeal No. 212 of 1975, decided on 3uly 30, 1976) to which one of us was a party is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule Of law, is followed by this Court itself".

Therefore, if the decision relied on by Shri Rangaswami had also ruled specifically on the question of the applicability of the provisions of the Limitation Act to proceedings before the quasi-judicial authorities, that decision would have to be followed by this Tribunal inspite of a contrary decision, subsequently in 1985, but by a smaller Bench. But it has been seen that the decision in AIR 1977 (S.C.) 523 proceeded on the basis that the provisions of the Limitation Act would apply to proceedings before the Sales-tax authorities also, the dispute being only whether in terms of the words in that Act, the provisions of Section 14 would be attracted. As against that, it has been seen that when the question was specifically before the Supreme Court it had held, in AIR 1970 (S.C.) 209, AIR 1975 (S.C.) 1039 and very recently in AIR 1985 (S.C.) 1279, that the provisions of the Limitation Act do not apply to proceedings before the quasi-judicial authorities. In these circumstances, this Tribunal is bound to hold, following the said decisions, that the provisions of the Limitation Act do not apply to proceedings before this Tribunal.

8. Shri Rangaswami urges that, in the peculiar circumstances of this case, no plea based on limitation should be even permitted to be taken by the Department. He points out that after rule nisi had been issued by the High Court on 30.5.1984, the Department moved for discharge thereof on 5.12.1984, contending that as there was an alternative remedy open to the applicants by way of reference to the High Court, their Writ petition would not maintainable. Shri Rangaswamy contends that the period of 90 days calculated from 7.5.84 had expired much before 5.12.84, and, therefore, when on 5.12.84, the department put forward the contention that the alternative remedy of reference to the High Court was open to the applicants they had conceded that the remedy was even then open to the applicants, though the 90 days mentioned in Section 35G had expired. Shri Rangaswami contends that in the circumstances the contentions now raised by the department ought not to be allowed to be put forward. But we are unable to agree with this contention since limitation is a plea which should be taken into consideration even if it is not set up by the aggrieved party, and, in any event, there is no question of estoppel against the provisions of a State.

9. Shri Rangaswami in this connection further relies upon the observations of the High Court in allowing withdrawal of the Writ petition and dismissal thereof. The High Court had observed "the learned counsel also points out that under the provisions of the Limitation Act, we should observe that this period spent in prosecuting this Writ petition with due diligence should be excluded from the limitations on period in respect of that reference. We can say that this Writ petition has been prosecuted with due diligence but we will make no observation as to whether the period has to be excluded under the Limitation Act. That would be for the Tribunal to consider. There is considerable law on this question already". Shri Rangaswami comments that the very fact that the High Court had made the observation about the prosecution of the Writ petition with due diligence (the words used in Section 14 of the Limitation Act) would show that the High Court itself was of the view that the- provisions of the Limitation Act would apply but only left open the question whether, in the circumstances, exclusion as provided under Section 14 of the Limitation Act, should be granted. We are unable to read any such interpretation on the words of the High court which have been extracted in full (supra). The High Court, on the other hand, appears to have deliberately left open

the question whether the exclusion sought for is permissible at all. The High Court had not observed that the provisions of the Limitation Act would apply, leaving open only the question of the grant of the relief in the circumstances of the case.

10. Shri Rangaswami then contends that, at any rate in the exercise of our inherent powers, we should order exclusion in the computation of the limitation period as prayed for by the applicants. Apart from the fact that a Tribunal such as ours (constituted under a Statute) can have no such inherent powers, we further observe that on the question of limitation, there can certainly be no case of exercise of inherent powers in condoning the period of limitation. We may also observe that on this question of application of the general principles underlying Section 14(2) of the Limitation Act on grounds of justice, equity and good conscience, the Supreme Court had in (supra) gone into this matter and had taken note of the fact that under the relevant Act, a sufficient period of limitation had been provided for filing the necessary application, and that a period of extension thereof had also been provided for, and in such circumstances the Legislature had deliberately excluded the application of the principles underlying Section 14 of the Limitation Act. These observations would apply to the present facts also.

11. Thus, on a careful consideration of the submissions of both sides, we hold that the exclusion of the period between the date of filing of the Writ petition in High Court and the date of disposal thereof by the High Court (as prayed for by the applicants) cannot be permitted in computing the period of limitation for the filing of this application for reference.

12. We are further satisfied that even if the above prayer of the applicants is open in law, and is to be granted in view of the observations of the High Court regarding the pursuit of the proceedings in the Writ petition with due diligence, this application will have to be dismissed, in any event, by reason of the further delay after the disposal of the Writ petition by the High Court. The copy of the order under Section 35C had been received by the applicant on 7.5.84. The Writ had been filed on 29.5.84 i.e. 22 days thereafter. The Writ petition had been dismissed on 29.7.85. If this period between 29.5.84 and 29.7.85 is excluded, then the 60 days prescribed under Section 35G would have expired on 5.9.85. This

application, as already noted, had been received on 27.9.85. Thus, there is a delay of 22 days beyond the initial period of 60 days. There was absolutely no explanation in respect of this period when the application for condonation of delay was originally filed. When this matter was brought to the notice of the applicants, they had filed the subsequent affidavit dated 28.11.85. The explanation offered herein is that after the disposal of the Writ petition the applicants had applied for and obtained a copy of the order of the High Court but that the copy had been misplaced in the office of the Advocates who were handling their case in the High Court, and, therefore, they had engaged another Advocate, who after study of the records filed this application on 27.9.85. Between the date of disposal of the Writ petition and the date of presentation of this application, 60 days had elapsed. No authenticated records have been filed to establish as to when the copy of the order of the Writ petition had been initially applied for and when it was received. Nor is there any affidavit from the earlier counsel or any person connected with his office as to the copy having been received but misplaced and could not be traced. Nor is there any authenticated record about the date when a copy was subsequently applied for and obtained. The photostat copy of the order of the High Court filed with the reference application contains a notation about somebody certifying on 5.8.85 as to the same being a true copy. It is explained that this photostat copy is of the original certified copy that had been obtained. The explanation as to the original certified copy having been lost is, as already mentioned, unsupported by any affidavit from a proper person.

Taking into consideration the period that had elapsed between the disposal of the writ petition and the date of filing of the present petition; the absence of proper explanation regarding the receipt of certified copy; or the loss thereof, we do not think that, in the circumstances of this case, the applicants have been able to establish that they were prevented by sufficient cause from presenting the application within the initial period of 60 days. We further hold that in respect of the further delay of 22 days also, there has been no proper explanation to account for the said delay. We, therefore, hold that, even if the contention of the applicants as to the applicability of the provisions of the Limitation Act to the present proceedings is to be accepted, (which is not the case) the applicants have made out no case for condonation of the delay.

13. Accordingly, we dismiss the application for condonation of the delay. In view of the said dismissal the application for reference is also dismissed, as barred by limitation.