Collector of Customs Vs. S.B. Plastic Industries and ors.

Collector of Customs Vs. S.B. Plastic Industries and ors.

SooperKanoon Citation : sooperkanoon.com/2561

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-24-1986

Reported in : (1988)LC573Tri(Delhi)

Appellant : Collector of Customs

Respondent : S.B. Plastic Industries and ors.

Judgement :

1. Collector of Customs, Bombay has filed the above captioned k appeals being aggrieved from the orders passed by Collector of Customs (Appeals), Bombay. In column No. 3 of the memorandum of appeal the date of service has been mentioned 1.6.1985 and all the four appeals were presented in the Registry on 8.10.85. With all the appeals, the appellant had attached similar applications for condonation of delay.

Application for condonation of delay in Appeal No. CA 1942/85-C. is reproduced as under:- "The Collector (Appeals) order No. S/49-246, 538, 1479 & 1390/ 84CL dated 30.4.85 was received on 1,6.85.

The time limit of 3 months from the date of communication of the above order for filing appeal before Appellate Tribunal expired on 1.9.85. The appeal could not be filed- within the prescribed limit of 3 months as the case file was mixed up with other files. This caused the delay.

The appellate decision involved an important question of law and the same if allowed to stand, will have serious repercussions on revenue and such, it, in the public interest that the delay may be condoned.

The Hon'ble Tribunal may therefore be pleased to condone the delay and admit the appeal please." 2. Shri A.S. Sundar Rajan, the learned JDR, has appeared on behalf of the appellant and Shri J.M. Jamadar, the learned Advocate has appeared on behalf of the respondents.

3. At the outset of the hearing, we had brought it to the notice of the learned Advocate that on 12.12.85 the Bench had directed to file an affidavit of the Collector. The Bench's direction dated 12.12.85 is reproduced as under:-C (Collector of Customs, Bombay v. Apna Industries) and C-263/85 (Collector of Customs, Bombay v. R.K. Industries) arise out of the same order. This appeal also arises from the same combined order of the Collector (Appeals). Shri Ajwani who is present today for the applicant, i.e. Collector of Central Excise, Bombay, submits that these cases may also be dealt with on the same basis. We accordingly direct that these cases also be listed on Monday, 20.1.1986. The Affidavit on the lines indicated in the orders in the two previous cases should be filed by Wednesday, 8.1.1986. Notice to be sent accordingly to both the sides. Shri Ajwani should ensure that one copy of the affidavit is sent direct to the respondents.

2. We have further indicated to Shri Ajwani that we would like to know the origin of the practice of the Collector (Appeals) endorsing copies of his order to the A.C.T.C.U. and in particular whether it was at the instance of the Collector of Customs. This information would be wanted not only for the purpose of the applications covered by the order of the Collector (Appeals) in this case, but also for the other similar case which is listed to be heard on the 18th instant. Shri Ajwani has undertaken to convey this to Shri Sundar Rajan." 4. Shri A.S. Sundar Rajan, the learned JDR, has stated that he has got instructions from the Collector of Customs, Bombay that no affidavit is to be filed, the matter is to be argued on the basis of the application for condonation of delay already on record. He has pleaded that in addition to the contentions made in the application for condonation

of delay, he would like to base his arguments on the ground that there had been no effective service of the order passed by the Collector of Customs (Appeals) in terms of the provisions of Sub-section (5) of Section 128A of the Customs Act, 1962. He has pleaded that there had been no service of the order passed by the Collector of Customs (Appeals) Bombay on the Collector of Customs, Bombay. He has pleaded that there is no dispute as to the dates. The Collector of Customs, Bombay became aware of these orders on 3.9,85 and he had authorised the Assistant Collector, Co-ordination Wing to file an appeal on behalf of the Revenue. He has also pleaded that the file was located on 30.8.85 and the appeal was given to the Collector on 4.10.85 for filing the same before the Tribunal. He has referred to a judgment of the Calcutta High Court in the case of Hind Development Corporation v. ITO reported in 118 ITR 873 wherein the Hon. High Court, had held that in terms of the provisions of Section 250(7) of the Income Tax Act, 1961, the date of service on the Commissioner of Income Tax is deemed to be the date from which the limitation will start to run for filing an appeal to the Tribunal. In that case the Income Tax Officer had obtained a copy of the order of the Appellate Assistant Commissioner under executive instructions of the Commissioner on 7A.72. The Appellate Asstt.

Commissioner had communicted a copy of his order to Commissioner of Income Tax in compliance with the provisions of Section 250(7) on 12.5.72. The appeal was filed on 4.7.72. The assessee had contended that the Income Tax Officer had acted as agent of the Commissioner and as such, the date of the service of the order on the Income Tax Officer was the date of service of the order on Commissioner. The Tribunal had accepted the contention of the assessee, and being aggrieved, the Revenue had filed a writ application before the Calcutta High Court and the Hon. High Court had held that date of service in terms of Section 250(7) of the Income Tax Act 1961 is the date on which the Commissioner had received the order from the office of the Appellate Asstt.

Commissioner of Income Tax". Shri Sundar Rajan, the learned JDR, had referred to another judgment in the case of Commissioner of Sales Tax v. Ram Kishan Kulwant Rai reported in (1979) 43 STC 137 wherein it was held that an authority given to an employee of a firm to receive a notice or document in connection with assessment proceedings would not include an authority to receive the assessment order, shri Sundar Rajan, the learned JDR, has referred to another judgment of the Hon.

Supreme Court in the case of Raja Harish Chandra Raj Singh, Appellant v. Dy. Land Acquisition Officer and Anr. reported in AIR 1961 Supreme Court 1500 wherein the Hon. Supreme Court had held that the date of service means the date of award either communicated to or is known by party whether actually or constructively. Shri Sundar Rajan, the learned JDR, has pleaded that in the case of the appellant, the date of service is to be deemed to be the date when the Collector of Customs became aware of the orders passed by Collector of Customs (Appeals), Bombay. He has also referred to another judgment of the Hon'ble Supreme Court in the case of Bachittar Singh v. State of Punjab reported in AIR 1963 Supreme Court 395. He has pleaded that the Hon. Supreme Court had held that the date of communication of the order to the person concerned is the date of service. Lastly, he has referred to a judgment of the West Regional Bench of CEGAT in the case of Damodar Keru Naiknawari v. Collector of Customs, Bombay reported in 1985 (22) ELT 212 wherein it was held that in the absence of evidence on the part of the Department regarding date of communication of order to the party, the date of receipt by the latter to be taken as date of communication.

Shri Sundar Rajan, the learned JDR, during the course of his arguments has also referred to the standing instructions issued by the Collector of Customs, Bombay vide his letters dated 25.1.85 and 25.6.85. He has filed photostat copies of the same. He has pleaded that these instructions issued by the Collector of Customs was his internal arrangement, and these instructions cannot be binding on the other Collectors of Customs in Bombay. He has pleaded that in Bombay there are three Collectors of Customs: 1. Collector of Customs, Bombay; 2.

Collector of Customs (Preventive), Bombay; and 3. Collector of Customs, Airport, Bombay. He has further pleaded that these instructions cannot be binding on the other Collectors and cannot go over and above the statutory provisions. He has pleaded that if Revenue's argument that there had been no service of the orders passed by the Collector of Customs (Appeals) on the Collector of Customs, Bombay is accepted, then there was no delay in the filing of appeal; and if this plea of the appellant is not accepted, alternatively, he had pleaded that condonation of delay on the ground that he was prevented by sufficient cause in the late filing of the appeals.

5. Shri J.M. Jamadar, the learned advocate, has appeared on behalf of the respondents. He has referred to the provisions of Sub-section (3) of Section 128A of the Customs Act 1962, and the language of the said sub-section shows that the Collector of Customs (Appeals) has to communicate the order passed by him to the appellant, the adjudicating authority and the Collector of Customs. He has argued that the word 'communicated' means to transmit the paper. He has referred to the provisions of Section 153 of the Customs Act 1962 which provide that any order or decision passed or summons or notice issued under this Act shall be served by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent. He has pleaded' that the Assistant Collector Co-ordination Unit, in the office of the Collector of Customs was acting as agent of the Collector and as such, the service on the agent of the Collector of Customs amounted to be the service on the Collector of Customs. He has also referred to the definition of the 'proper officer' in terms of Sub-section (4) of Section 2 of the Customs Act 1962. "proper officer", in relation to any fuction to be performed under this Act means the officer of Customs who is assigned those functions by the Board or the Collector of Customs. Shri Jamadar has further argued that there are no similar provisions under the Income Tax Act 1961, and as such the judgment cited by the learned JDR under the Income Tax Act do not help him. He has also referred to judgments of the CEGAT wherein the Tribunal had held that misplacement of papers or negligence is not a sufficient cause. In particular, he has referred to the following judgments: (iv) 1985 (19) ELT 421 (Tribunal) 1985 ECR 1826 - Everet India P. Ltd. v. CC Calcutta.

He has pleaded that the appeals filed by the Revenue are hit by limitation. The appellant has not been able to prove that there was sufficient cause in the late filing of the appeals, and there is no justification for condonation of delay.

6. In reply, Shri A.S. Sundar Rajan, the learned JDR, has reiterated his arguments that the appellant was prevented by sufficient cause in the late filing of appeals. He argued that the Tribunal had held in the case of CC Bombay v. Godrej Soap Ltd. reported in 1985 (21) ELT 529, that in the case of the Department there has to be a different approach in the case of delay by department, and delay by a private party. He has pleaded that in the said judgment the judgment of the Hon. Supreme Court in the case of State of Uttar Pradesh v. Bahadur Singh and Ors.

reported in 1983 ECR 1556D had been referred wherein the Hon'ble Supreme Court had observed that - "Not that the departmental authorities charged with a duty to implement the law should not be vigilant but one aspect cannot be overlooked that a departmental authority may. delay the moving of the higher court with oblique motives and the public interest may suffer if such cause is thrown out merely on the ground of some delay which is also explainable. These are relevant considerations which must enter a judicial verdict before rejecting such case on the ground of delay." He has referred to another judgment of the CEGAT in the case of Collector of Central Excise v. Multiple Fabrics Co. (P) Ltd. reported in 1984 (16) ELT 299 wherein the Tribunal had held that if the delay in transit was proved to the satisfaction of the Tribunal, the delay in filing of the appeal can be condoned.

7. After hearing both the sides and going through the facts and circumstances of the case, we would like to observe that the Collector of Customs, Bombay had issued standing order vide his No. 6756 dated 25.6.81.. The same is reproduced below: "Provision has been made in the Finance (No. 2) Act 1980 for creation of Appellate Tribunals. The relevant extracts of the Finance (No. 2) Act 1980 are enclosed. It has been decided to centralise the work relating to filing of appeals and other matters to be pursued with the Tribunals. The Unit, to be headed by an Assistant Collector, will initially comprise one Appraiser, one Examiner, one P.O. (S.G.) one Stenographer, one U.D.C. & one L.D.C. It will be known as the Tribunal Coordination Unit.

2. With effect from 1st of April, 1981 the Appellate Collector will serially number the appellate orders issued by them. They will forward two copies of such

appellate orders - one copy to the adjudicating authority and the other direct to the Tribunal coordination Unit. The Custom House files will accompany the appellate order sent to the adjudicating authority.

3. On receipt of the copy of the appellate order in the Tribunal coordination unit it would be entered in a register to be maintained as at Annexure A and columns 1 to 4 filled in. Thereafter the appellate orders should be scrutinised to see whether the appeal has been admitted or rejected. Rejected appeals should be filed separately and should be dealt with further as detailed in paragraphs 6 of this S.O.
4. Where the appeal has been wholly or partially admitted, memorandum should be sent to the group/department where the matter originated drawing its attention to the appellate order' and asking the group/department whether it is proposed to refer the order to the Govt. for review 'under Section 130 of the Customs Act, 1962.

The adjudicating authority should, on receipt of the copy of the appellate order referred to above, would forward that copy to the group/department concerned for scrutiny. Also the group should on its without waiting for a formal memorandum from the T.C.U., initiate action on receipt of that order. Where it is propsed not to seek review on receipt of that appellate order, the A.C. in charge of T.C.U. should be suitably informed. Thereupon, columns of the annexure A will be filled in indicating that it has been decided not to seek review.

5. Where it is decided that the order should be reviewed it should be put up to the Collector for obtaining his orders. Thereafter the group/department concerned should prepare the draft letter to the Ministry communicating the portions of the order, on which review is sought supported by full reasons why it is felt the order should be reviewed. The draft letter for review along with the case file and other documents relied upon or mentioned in the draft letter should be sent to the T.C.U. not later than 30 days from the date of communication of the appellant order to the Custom House. Thereafter the T.C.U. shall finalise the proposal for review, and forward it to the Additional Secretary to the Government of India, Ministry of Finance, New Delhi for review. Before the letter is issued it should be ensured by the coordination unit that it does not contain patent errors or inaccuracies and

when necessary the unit shall remit the draft letter back to the group refer for clarification. Obviously inadvertent errors minor discrepancies etc. should however be corrected in the Coordination Unit itself.

6. The provision relating to the tribunal provide for filing an appeal against an order of Collector (Appeals) by either party.

Where such an appeal is filed before the Tribunal the other party shall within ^5 days of the receipt of the notice of appeal file a memorandum of cross objections. Instructions regarding filing of such memorandum will issue separately in due course. For the present, where an appeal is rejected by the Appellate Collector, particulars thereof should be entered in a register to be maintained as at annexure 'P' in respect of columns 1 to 4. No further action need be taken in respect of such appeals.

7. It should be noted for strict compliance that the time limit of 90 days for filing an appeal in the Tribunal should now be construed to operate in respect of proposals for review to the Ministry' of Finance. The intention behind this is that by the time the Tribunals are set up the Custom House would have geared itself to working within the statutory time limits laid down. Since such statutory time limits are not relaxable the consequences of any delay in such matters will be irreversible and therefore grave.

8. The registers at Annexures A & B shall be put up to Assistant Collector in charge of the unit every fortnight along with an abstract showing the number of cases pending and reasons for pendency. A monthly report showing the position of pendency should be submitted to the Collector.

9. Where an Appellate Order is received prior to the receipt of one or more order numbered before it, sufficient space should be kept in the register so as to provide for making entries relating to such orders, e.g. if after Order No. 5 Order No. 8 is received, two entries should be kept blank to provide for entering particulars of orders 6 7. Where an order has not been received for over a fortnight after receipt of the order number subsequent to it a communication should be sent to the Appellate Collector's office pointing this out.

10. A report by all be forwarded to D.C. (Appraising Coordination) after a month of implementation of this order reporting any difficulties experienced and modifications required." He had modified his earlier order dated 25.6.81 by another order dated 25.1.85. Tie same is reproduced below:- "1. This order is issued in partial modification of the earlier Standing Orders Nos. 6756 dated 25.6.81 and No. 6772 dated 29.10.82.

2. As per the instructions contained in the earlier orders the Collector of Customs (Appeals) will serially number the orders-in-appeals issued by them. They will forward one copy of the order-in-appeal to the original adjudicating authority. They should also ensure that customs House records are also sent along with the Orders-in-Appeals to the original adjudicating authority.

3. On receipt of the copy of the Order-in-Appeal, the adjudicating authority (viz. the Assistant Collector or Deputy Collector as the case may be) will put their signature with full date and also put the rubber stamp showing their designation and the date of receipt.

The statutory time limit will be computed from the date of receipt.

4. Where the appeal has been wholly or partially admitted, the concerned adjudicating authority will immediately forward it to the group/Department for detailed scrutiny. After scrutiny, if it is decided that an appeal should be filed to CEGAT against the order-in-appeal, the concerned Group/Department should prepare a detailed note, clearly mentioning therein, the grounds of appeal and the documents relied upon, and then obtain the Collector's Authorisation as required under Section 129A(2) of the Customs Act.

This should be done within 30 days from the date of receipt of the Order-in-Appeal.

5. After obtaining the Collector's authorisation, the papers should be forwarded to the Tribunal Coordination Unit to prepare and file the appeal within 30 days from the date of receipt of Collector's authorisation.

6. In the cases where it will not be possible to prepare grounds of appeal within the time limit, the Assistant Collector should invariably state the reasons for the delay so as to enable the Tribunal Coordination Unit to prepare the prayer for condonation of delay.

7. Whenever assessees file appeals to the CEGAT, against the orders passed by the Collector, the Collector (Appeals) or the Additional Collector, a copy of the appeal, served on the Collector of Customs, Bombay is received in the Tribunal Coordination Unit. The Tribunal Coordination Unit immediately forwards the same to the concerned Groups/Departments. The concerned Groups/Departments shall furnish, within 10 days from the date of receipt of the copy of the appeal from the Tribunal Coordination Unit, the original case records with detailed parawise comments on the appeals and paper books.

The. Assistant Collector shall strictly observe the time limits, as laid down, for filing appeals to the CEGAT and furnishing the case records with comments and paper books in the cases of appeals filed by the assessees." 8. A simple perusal of both the orders shows that the Collector of Customs, Bombay in para No. 2 of his order dated 25.6.81 had written that the Appellate Collector will send one copy of the order to the adjudicating authority and other direct to the Tribunal Coordination Unit. Thus the Assistant Collector, Coordination Unit was acting as an agent of the Collector. Section 153 of the Customs Act 1962, which relates to the service of the order or decision, is reproduced as under:- Any order or decision passed or any summons or notice issued under this Act, shall be served T (a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or (b) if the order, decision, summons or notice cannot be served in the manner provided in C'. (a) by affixing it on the notice-board of the Customs house." 9. Shri A.S. Sunder Rajan, the learned JDR, had cited the judgment under the Income Tax Act 1961. He laid special emphasis on the case of Hindustan Development Corporation v. ITO, Spl. Circle 3 and Ors.

reported in 118 ITR 873. Headnote from the said judgment is reproduced as under: - "An appeal was preferred to the Tribunal by the Commissioner. The ITO had obtained a copy of the order of the AAC under executive instructions from the

Commissioner on April 7, 1972. The AAC had communicated a copy of his order to the CIT in compliance with s.250(7) on May 12, 1972. The appeal was filed on July H, 1972. It was contended on behalf of the assessee that as the ITO obtained the copy of the order of the AAC under a direction from the Commissioner, the ITO had been constituted the agent of the Commissioner and accordingly limitation for the filing of appeal started running from April 7, 1972, and the appeal was barred by limitation. The Tribunal accepted the contention made on behalf of the assessee and held that the time for filing the appeal should be computed from April 7, 1972. The Tribunal accepted the contention made on behalf of the assessee and held that the time for filing the appeal should be computed from April 7, 1972. The Tribunal however condoned the delay in filing the appeal and admitted. The assessee filed a writ petition challenging the propriety of the Tribunal's order.

Held, the instruction of the Commissioner did not show that the Commissioner authorised the ITO to receive a copy of the order of the AAC under s. 250(7) of the Act nor was there anything to show that the Commissioner appointed the ITO his agent. There was also no material to show that the AAC delivered a copy of his order to the ITO treating the latter as the agent of the Commissioner. On the other hand, the fact that in spite of the delivery of a copy of his order to the Commissioner in compliance with s.250(7) clearly indicated that the AAC did not deliver the copy of the ITO as agent for the Commissioner. The Commissioner obtained a copy of the order under s.250(7) only on May 12, 1972. Hence, the appeal was not barred by limitation." 10. The Hon. Calcutta High Court had come to this conclusion on the ground that there was no authorisation by the Commissioner of Income Tax to the Income Tax Officer to receive orders. In the matters before us, there are specific orders issued by the Collector of Customs, Bombay vide his No. 6756 dated 25.6.81 and 25.1.85 wherein it was written by the Collector to the Collector of Customs (Appeals) to send one copy of the order to the adjudicating authority, other to the Coordination Unit in the office of the Collector of Customs. The Collector of Customs obviously does not receive the papers personally.

Instead of sending the papers in the Receipt Section of the Collectorate, the Collector (Appeals) has sent to the Coordination Unit of the Tribunal in his office." For all purposes, the Assistant Collector, Coordination Unit had acted as agent of the Collector, and now he cannot say that service on the Assistant Collector, Coordination Unit was no service on the appellant. In the matters before us all the appeals have been filed by the Collector of Customs, Bombay, and obviously the Department cannot have the benefit of the argument that there are 3 Collectors in Bombay and general authorisation by one Collector will not be binding on the other Collector because this is not the case of any of the parties. The Collector has not filed the affidavit/affidavits even though a specific direction was given on 12.12.1985. The other judgments cited by the learned JDR do not help the appellant in any way as the facts and circumstances are different.

Shri A.S. Sundar Rajan's argument that in public interest, Revenue should be placed on superior footing is not tenable. We hold that the date of service of the order on the Assistant Collector, Coordination Unit is the date of service on the Collector of Cutoms, Bombay and the limitation would run from that date. The appellants have not been able to satisfy us that they were prevented by sufficient cause in the late filing of appeals. The applications for condonation of delay are rejected.

11. Since we are rejecting the applications for condonation of delay, the above captioned four appeals are also dismissed being hit by limitation.