Electrofronts Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-16-2002

Reported in : (2003)(152)ELT388Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Electrofronts

Respondent : Commissioner of C. Ex.

Judgement :

1. Each of the appellants received on 20-3-2001, an order passed by the Additional Commissioner of Central Excise demanding duty from the assessee, Electrofronts and imposing a penalty on it and under Rule 209A on Sanjay Mehta, its proprietor. The appeal to the Commissioner (Appeals) against this order was required to be filed, as the law then stood, on or before 20-6-2001, Section 35 of the Act was amended with effect from 11-5-2001, reducing the period for filing an appeal to the Commissioner (Appeals) from three months to two months, the power of the Commissioner (Appeals) to condone the delay in filing an appeal of three months was reduced to 60 days. The appeal filed by each of these appellants reached the Commissioner (Appeals) on 15-7-2001. If the time limit provided in the earlier section were taken into account, the delay in filing the appeal would be 27 days. If the provisions of the amended section were taken into account, it would be 57 days and beyond the power of the Commissioner to condone. The Commissioner (Appeals) has dismissed the appeals before him on the ground that they were barred by limitation, noting that he does not have the

power under the amended Section 35 to condone the delay of 57 days. Hence this appeal.

2. Representative of the appellant accepts that the provisions which were amended being procedural in nature, the amended law will have retrospective application and would ordinarily apply, in normal course, to the appeal that was filed before the Commissioner (Appeals). He however places reliance upon the judgment of the Supreme Court in New India Insurance Co. Ltd. v. Shanti Misra 3. The Supreme Court in that judgment was concerned with validity of a claim made before the Motor Vehicles Accidents Claims Tribunal. On 16-2-1956, the Motor Vehicles Act, 1939 was amended and Section 110 was deleted and new Sections 110 to 110F were introduced containing, inter alia, provisions for creation of Claims Tribunal. The question was whether a claim that arose as a result of an accident before this Tribunal was set up and the whole amended Section 110 would apply would be considered. Section 110A provided that no application for compensation would be made beyond 60 days from the occurrence of the accident. The accident in question had taken place more than 60 days earlier. The court, in its judgment, recognised that the change in law was merely change of forum, i.e. a change of procedural law and would operate retrospectively. By considering the provisions, however, it noted that the change of forum "was meant to be operative retrospectively irrespective of the fact as to when the accident occurred." On the consideration of the provisions of Section 110 and noting that it was the object of the legislature to provide a cheap remedy available as soon as the Tribunal was constituted by the State Governments, in all cases irrespective of the date of accident, it said that the Tribunal could hear and dispose of the claim.

4. We do not see how this judgment helps the appellant. The appellant forum that was available to the party continued to be the same. The only change that was made by amendment of Section 35 is to reduce the period within which the appeal would be filed and the period of delay which the Commissioner (Appeals) would condone. There is therefore no perceptible wider objective in pursuance of which the change has been made; obviously it was only to mean it in order to reduce the time for filing the appeal. That being the case, we do not find any ground provided in exception to the matter of procedural law that would apply by means of which

the period of limitation contained in amended law will apply. An incidental fact to be taken note of is that the proposed amendment was part of the budget proposal of 28th March and would no doubt in the ordinary course have come to the attention of an assessee.

This however does not in any way affect the applicability of the principles of law.

5. We are therefore of the view that the Commissioner (Appeals) has rightly applied the amended period of limitation and hence equally found ourselves unable to condone the delay.