Abhishek Auto Industries Vs. Cc (import)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-10-2002

Reported in : (2003)(87)ECC521

Judge : K Usha, a T V.K.

Appellant : Abhishek Auto Industries

Respondent : Cc (import)

Judgement :
1. In this appeal the issue arising for consideration is whether Commissioner (Appeals) has the power to condone the delay in filing appeals beyond the period prescribed under Section 128 of the Customs Act, 1962. We heard both the learned counsel for the appellant as well as the learned DR.2. Section 128 of the Customs Act, as it stands amended by the Finance Act, 2001 is quoted below: "Section 128--Appeals to Commissioner (Appeals)--(1) Any person aggrieved by any decision or order passed under this Act by an officer of Customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order: Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days." 3. The above would show that an appeal has to be filed before the Commissioner (Appeals) within 60 days from the date of communication of the original order. Before the amendment in 2001 the period prescribed was 30 days.

Under the proviso the Commissioner (Appeals) has been given the power to condone the delay for a further period of 30 days.

It is not disputed that in this case the appeal was filed beyond the period within which the appeal could be entertained by the Commissioner (Appeals) even by applying the provisions under the proviso. But the learned counsel for the appellant contended that if sufficient cause is shown by the appellant, it will be open to the Commissioner to condone the delay even beyond 30 days provided under the proviso. In support of the above contention he placed reliance on the decision of a Single Judge of the Allahabad High Court in Jaihind Bottling Co. (P) Ltd, v.Commissioner (Appeals), Central Excise Allahabad, 2002 (83) ECC 587.

(All) : 2002 (146) ELT 273. In the above decision, the learned Judge has taken the view that Section 35 of the Central Excise Act does not indicate that Section 29(2) and Section 5 of the Limitation Act have been excluded expressly. Therefore, it will be open to the Commissioner (Appeals) to condone the delay beyond the period of 30 days provided under the proviso in appropriate cases.

4. It is relevant to note that Section 35 contains similar provisions regarding the period for filing the appeal. Section as it stands amended by Finance Act, 2001 reads as follows: "Section 35--Appeals to Commissioner (Appeals)--(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals)(hereinafter in this Chapter referred to as the [Commissioner (Appeals)] within sixty days from the date of the communication to him of such decision or order: Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of six days, allow it to be presented within a further period of thirty days.

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner." 5. On the other hand, the learned DR pointed out that a Division Bench of the Andhra Pradesh High Court has taken a different view in Shanti Alloys Pvt. Ltd. v. CCE, Hyderabad 1999 (109) ELT 79 wherein it has been held that the Commissioner (Appeals) cannot entertain an appeal filed

beyond the period of 90 days in view of the specific provisions contained in the proviso to Section 35(1). It is also pointed out that South Zonal Bench, Bangalore had followed the above decision of the Allahabad High Court in HMT Ltd. v. CCE Chennai, 2002(142) ELT 143.

Reliance was also placed by the learned DR on a decision of South Zonal Bench, Chennai in Tamil Nadu Electricity Board v. CCE, Cochin, 2002 (48) RLT 188 where a similar view has been taken regarding power of the Commissioner (Appeals) to condone the delay under Section 35(1).

6. We find that there is an elaborate discussion on the power of the Tribunal to condone the delay in filing application for referring questions of law to the High Court under Section 35-G of the Central Excise Act in T.N. Tobacco Co. v. CCE, 1998 (61) ECC 615 (T) : 1998 (28) RLT 73 a decision of the South Regional Bench (Chennai). As in the case of Section 35 under Section 35-G also the application is required to be filed within 30 days (before amendment) from the date of service of the order and the Tribunal is vested with the power to condone the delay for another 30 days on sufficient cause being shown. The question that came up for consideration was whether Tribunal has power to condone the delay beyond 30 days in terms of proviso to Section 35-G.After referring to several decisions of the Supreme Court, High Court and the Tribunal including a Larger Bench decision in CCE Meerut v.Lalchand Anand and Ors., 1986 (23) ELT 530, the Tribunal took the view that since the Legislature in a special statute prescribes certain period of limitation for filing the application and has also provided in clear terms that such period can be extended on sufficient cause being shown only upto a specified time limit and no further, the Tribunal will not get the jurisdiction to extend the time for a longer period than provided under the proviso by taking recourse to the provisions of the Limitation Act, 1963.The Commissioner of Sales Tax, Uttar Pradesh, Lucknow v. M/s. Parson Tools & Plants, Kanpur, AIR 1975 SC 1039 that the appellate authority and the Judge (Revisions) Sales Tax are not Courts but merely Administrative Tribunals and Section 14(2) of the Limitation Act does not in turn apply to proceedings before them. It was then held as follows: "Thus the principle that emerges is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder

and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum only upto a specified time-limit and no further, then the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act."In Nityanand M. Joshi and Anr. v. The Life Insurance Corporation of India, AIR 1970 SC 209 it has been observed that the scheme of the Indian Limitation Act is that it only deals with applications to courts and since the Labour Court is not a court its provisions will not be applicable to applications filed under Section 33C(2) of Industrial Disputes Act, 1947.In K. Venkateswara Rao and Anr. v. Rokkam Narasimha Reddi and Ors., AIR 1969 SC 772 Supreme Court took the view that the provisions of Indian Limitation Act, 1963 will apply to all civil proceedings and some special criminal proceedings which can be taken in a Court of law unless the application thereof has been excluded by any enactment the extent of such application is governed by Section 29(2) of the Limitation Act. But the Limitation Act cannot apply to proceedings like election petition inasmuch as Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Limitation Act.

8. We find that the view taken by the Division Bench of the Andhra Pradesh High Court in Shanti Alloys Pvt. Ltd. v. CCE, Hyderabad is in consonance with the principles laid down by the Supreme Court in the above mentioned decisions on the applicability of the provisions of the Limitation Act to special statutes, whereas the learned Single Judge of the Allahabad High Court has not followed these principles. Apart from the above, it is relevant to note that SLP (Civil) 12450/98 filed against the decision of this Tribunal in T.N. Tobacco Co. v. CCE was dismissed on 17.8.98.

9. We will, therefore, be fully justified in following the Division Bench decision of the Andhra Pradesh High Court in preference to the Single Judge Bench decision of the Allahabad High Court. In the result, we hold that the Commissioner (Appeals) was correct in refusing to condone the delay beyond the period

specified in the proviso to Section 128(1) of the Customs Act, 1962. The appeal, therefore, fails and it stands dismissed.