

**Canara Workshop Ltd. Vs. Collector of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** May-05-1983

**Reported in :** (1983)CENCUS986D

**Appellant :** Canara Workshop Ltd.

**Respondent :** Collector of Customs

**Judgement :**

1. The question which fell for determination, before the Assistant Collector originally in these proceedings, was as to the availability of benefit of Notification No. 67/73-CE, dated 1-3-1973 in relation to a product which the party described as "cast steel billets manufactured from old iron and steel melting scrap with the aid of electric furnace which was subsequently rolled into bars and cleared thereafter by transfer to the Spring Division of the appellants for manufacture of automobile leaf springs". The Assistant Collector, Mangalore, by his order dated 24-2-1982, confirmed the demand amounting to Rs. 1,80,162.50 under Rule 10 read with section 11-A of the Central Excises and Salt Act, 1944 on the view that they had wrongfully availed of the exemption contemplated by aforesaid Notification No. 67/73 and that they had, in fact, been found to have been manufacturing billets and bars with the admixture of "fresh unused steel melting scrap" on which no duty had been paid, and thus fell outside the scope of the Notification, under reference, which permitted rebate or concessional rate of duty only if duty paid fresh unused steel melting scrap is employed in the manufacture.

2. The appellant which is a company named M/s. Canara Workshops Ltd., carried an appeal against this order to the Appellate Collector of Central Excise, Madras but the same was rejected by him on the ground of being barred by limitation by his order dated 12-8-1982. It was feeling aggrieved by this order that the Company went in revision to the Additional Secretary to the Government of India under the provisions of section 36 of the Central Excises and Salt Act, 1944 and it is this revision petition which has been received by transfer to the Tribunal by virtue of provisions of section 35P of the said Act, and is being disposed of as such.

3. The appellants contend in this appeal that the order of the Appellate Collector was not sustainable in law inasmuch as he erred in rejecting the appeal summarily, without going into merits, on a technical ground of delay in instituting the appeal and that the Appellate Collector ought to have held that in the circumstances placed before him it was a fit case for condonation of delay and he ought to have appreciated that the appellant was prevented by reasonable cause from filing the appeal within the prescribed time. The reasons, as set out in the grounds of appeal, were that there was a strike by their Office staff from 10th August, 1981 till the end of January 1982 and because of that there was lot of confusion and backlog of work and this prevented the company in fulfilling its various statutory functions and it was due to this reason that the delay occurred in the filing of the appeal.

4. The confirmation of the demand of duty was also assailed on facts by describing it as contrary to law and as a result of failure on the part of the Assistant Collector to properly appreciate the facts and take note that internal scrap generated in the unit was in the nature of circulating scrap arising in the course of conversion of billets into bars and the scrap so generated was not being cleared out of the factory but re-used in the manufacture of billets. It was further pleaded that the very same Assistant Collector on a proper appreciation of the facts has, for two subsequent periods withdrawn the demand on the basis of identical facts stated before him, and as such the confirmation of the demand in this case was also liable to be quashed.

5. On the appeal being taken up for hearing, Shri P.G. Gokhale, Advocate appeared for the appellants, whereas the respondent was represented by Shri A.K. Jain, SDR. Shri Gokhale confined his arguments to the question of limitation only because that is the only ground on the basis whereof the Appellate Collector in the Order-in-Appeal rejected the appeal filed before him and since he had not gone into the facts or merits of the case, the same were not touched during the arguments before the Tribunal.

6. The learned Counsel for the Appellants strenuously argued that the time limit of three months provided by section 35 of the Act, as it was then applicable, was only declaratory and that there was no inbuilt restriction in the Act not to extend time or entertain appeals after the said period by exercising powers of condonation of delay on sufficient cause being shown before the Appellate Collector. He argued in the alternative, that even if it were to be assumed, though he did not accept the position, that section 35, as it then was, did not contain any provision for extension of time or for condonation of delay but by virtue of the provisions of section 29(2) of the Limitation Act, the Appellate Collector was bound to consider the prayer of the appellants for condonation of delay by taking into consideration Section 5 of the said Act, that the order was bad at law and not sustainable and that the Appellate Collector committed a manifest error by not even advertent to their prayer for condonation of delay, by not adjudging it on merits. He placed reliance on AIR 1977 SC p. 523, in the case of Commissioner of Sales Tax v. Madanlal and Sons, in support of this contention, to the effect that provisions of section 29(2) of the Limitation Act would make section 5 of the said Act applicable and urged that said section not laying down any restriction as to point of time, and providing for extension of time on cause being shown, for any length of time, the present was a case where the said provisions ought to have been kept in mind, and the appellants' request for condonation of delay considered on merits.

7. The learned Counsel also attempted to distinguish his case from the cases considered and decided by this Tribunal before, holding that Customs Act and Central Excises Act or rules framed thereunder were self-contained statutes, covering the gambit of entire fiscal legislation and as such provisions of Limitation Act could not be inducted into the same. He built up his arguments in this regard

by making pointed reference to one of such cases decided by the Tribunal, namely, Miles India Ltd., reported in 1983 Excise and Customs Reporter, P. 242D, by contending that it was based primarily on the Supreme Court authority cited in the case of Commissioner of Sales Tax, U.P., Lucknow v. M/s. Parson Tools and Plants, Kanpur (AIR 1975 SC 1039) wherein it was held that provisions of Limitation Act could not be invoked before adjudicating authorities, other than Courts. He, however, urged that there was a later authority of the Hon'ble Supreme Court which is cited as AIR 1977 SC P. 523 in the case of Commissioner of Sales Tax v. Madanlal and Sons, Bareilly with reference to the provisions of the U.P. Sales Tax Act, making section 12(2) of the Limitation Act applicable to proceedings before the Judge (Revision) Sales Tax, giving the party benefit for the time taken, in obtaining certified copy of the Order-in-Appeal. He thus pleaded that on a parity of reasoning, provisions of section 29(2) would also apply to proceedings before authorities acting under local or special Acts which, in turn, made applicable section 5 of the Limitation Act, and contending that Central Excises Act was a special Act within the meaning of section 29(2) of the Limitation Act, and as such by virtue of section 5 of the aforesaid Act, the prayer for condonation of delay could be considered, without being circumscribed by any time limit.

8. We have given our very careful thought to the contentions canvassed by the learned Counsel but we find ourselves unable to accept the line of argument put forward by the learned Counsel. Apart from the fact that the authority of the Hon'ble Supreme Court cited by the learned Counsel has not overruled the previous authority of M/s. Parson Tools and Plants, Kanpur (AIR 1975 SC 1039) which also related to the same U.P. Act, there is one other authority of the Supreme Court reported as AIR 1970 SC 209 laying down the principle that "the scheme of the Limitation Act, made it clear that it only deals with application to Courts, and their Lordships specifically held that the Labour Court was not a Court within the meaning of Limitation Act.

9. We note that both these authorities were not before their Lordships of the Supreme Court while deciding the case reported as AIR 1977 SC.P. 523. We can, therefore, with all respects, say that the majority view of the Hon'ble Supreme

Court propounds the proposition that provisions of the Limitation Act cannot be inducted into other Acts which deal with adjudicating authorities, other than Courts.

10. While going through the Commentary of the Limitation Act by R.Mitra (Fourth Edition at P. 395), with reference to section 29(2) of the said Act, we find that there is another authority of the Hon'ble Supreme Court reported as AIR 1958 SC P. 36 laying down specifically that in order to attract the application of section 29(2), the proceedings initiated under a special or local law should be those which are legally capable of being instituted "only before a Court", and that where a special or local law provides for a special forum for adjudication of disputes, and its own set of adjudicating authorities with a different period of limitation, than as prescribed under the Limitation Act, the provisions of section 29(2) or any other provisions of the Limitation Act would not apply, in the absence of any specific provision having been made, as to their applicability, in the special or local Act, as may be under consideration.

11. In this view of the matter, it is our firm view that section 29(2) of the Limitation Act cannot be pressed into aid by the appellant and consequential reference to section 5 of the said Act is also misplaced, because apart from the view, as discussed above, that these provisions can apply only to applications or appeals before courts and not to proceedings before special adjudicating authorities, otherwise also we fail to subscribe to the view as expressed by learned counsel in this case that the Central Excises Act can be designated as a "special law" within the meaning of section 29(2) of the Limitation Act. The term, in our view, connotes such piece of legislation which has a narrow field or area for its operation or application, and would not apply to such a general legislation, by means of a Central Act, which covers the whole gambit of fiscal legislation, and covers the entire field of Central Excise Revenue by providing its own machinery of collection, and its own set of enforcing as well as adjudicating authorities. We are, therefore, constrained to reject the arguments advanced on behalf of the appellant, seeking to take recourse to section 5 of the Limitation Act.

12. So far as provisions of Central Excises Act itself is concerned, in section 35 of the Act as it then was applicable at the time the right of appeal accrued in this

case, there was absolutely no provision for extension of time or condonation of delay, and the limitation provided was strictly of three months. We do not find it possible to accept the contention put forward on behalf of the appellant that for reason of the subsequent amendment, adding further period of three months for extension, vesting discretion in the Appellate Collector, it ought to be taken as having been always implied and that what was made express by the amendment is to be deemed to have been always there. We are not subscribing to this line of argument, because it is a settled proposition of law regarding interpretation of statutes, that the terms or words used in a statute have to be strictly construed and nothing is to be added thereto or deemed to be implicit so long it has not been made explicit and that the courts are to go by the expressed intent of law, as it prevails at a given time particularly when the statute is a taxing statute, and there is policy behind the time being restricted, so that controversies regarding liability to taxation or otherwise are settled as early as possible both in the interest of Revenue as well as the Subject. Thus, no implied power of extension of limitation can be construed to have been inherent or implicit in the provisions of section 35 of the Central Excises and Salt Act as applicable at the relevant time.

13. We find ourselves fortified in holding the view we have taken by the three judgments cited by the learned Senior Departmental Representative, Shri A.K. Jain, while controverting the plea of the appellant. These are of different High Courts, holding uniformly that section 35 of Central Excises and Salt Act, 1944 did not confer any power on the appellate authority to condone delay in filing an appeal, which cases were all before the amendment of section 35 whereby further period of three months had been given for extension, subject to the discretion of the Appellate Collector. The said authorities are 1978 E.L.T. (J 61 A) of Bombay High Court (DB) ; 1979 E L.T. (J 602) of Kerala High Court (DB); and 1981 E.L.T. 592 (Guj) (DB). In view of the foregoing discussion, and the authorities cited above as well as the view the Tribunal has already taken as summed up in the Miles India Ltd. case reported in 1983 Excise & Customs Reporter P. 242, we are satisfied that the Appellate Collector did not act wrongly, in rejecting the appeal as time-barred, having been admittedly filed before him, beyond the expiry of period of three months, from the date of service of the order of the Assistant Collector on the appellants.

We, therefore, hold the present appeal liable to dismissal, and dismiss accordingly.

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