

Collector of Central Excise and Vs. Mansa Ram and ors.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-11-1987

Reported in : (1987)(29)ELT544TriDel

Appellant : Collector of Central Excise and

Respondent : Mansa Ram and ors.

Judgement :

1. Along with the captioned two applications for making reference to the High Court purporting to be Under Section 130 of the Customs Act, the applicants have also moved separate applications for condonation of delay of more than two months in filing the reference applications in question on the ground that the delay was not intentional and the issue involved is of public importance.

2. After hearing Smt. Nisha Chaturvedi, learned SDR for the applicants and Shri V.J. Kanetkar, consultant for the respondents, I am of the view that this Tribunal has no power to condone the delay beyond 30 days as provided by Proviso to Section 130 of the Customs Act, 1962. In the instant case, according to the applicants themselves, the order in question passed by this Tribunal was received by them on 27-6-1986 and both the applications for making reference were filed in the Registry on 10-11-1986, that is to say, long after 60 days. Section 130 of the Customs Act provides that the Collector of Customs or the other party may, within 60 days of the date upon which he served with notice of an order Under Section 129-B, by application in such form as may be specified require the Appellate Tribunal to refer to the High Court any question of law arising out of such order

and subject to the other provisions contained in the Section, the Appellate Tribunal shall draw up a statement of the case and refer it to the High Court. Proviso to that Section also provides that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period of 60 days as herein before specified, allow it to be presented within a further period not exceeding 30 days. Thus, a plain reading of the Section along with its Proviso makes it clear that the Tribunal can allow the party concerned to present the application for reference within a further period not exceeding 30 days. In other words, if the application is filed after 60 days the Tribunal can condone the delay not exceeding 30 days if it is satisfied that the applicant was prevented by sufficient cause from filing the application within 60 days. To put it tersely, the Tribunal has no power to condone the delay beyond 30 days in view of the express Proviso to the Section. In this view of the matter the case of Miles India Ltd. may be referred to with advantage. In that case this Tribunal after setting out the various judgments held that for the refund of any duty of excise paid by the assessee the time-limit under the Excise Law will prevail and the general Law of Limitation would not be attracted. This order was taken up in appeal by M/s Miles India Limited before the Hon'ble Supreme Court [Miles India Limited v. The Assistant Collector of Customs, 1985 ECR 289 (S.C.)] and while dismissing the appeal as withdrawn their Lordships of the Supreme Court observed as follows:- "After the matter was heard for some time and it was indicated that the Customs Authorities, acting under the Act, were justified in disallowing the claim for refund as they were bound by the period of limitation provided therefor under S27(1) of the Customs Act, 1962, learned Counsel for the Appellant sought leave to withdraw the appeal. We accord their leave to withdraw the appeal but make it clear that the order of the Customs, Excise & Gold (Control) Appellate Tribunal suffers from no infirmity. If really the payment of the duty was under a mistake of law, the appellant may seek recourse to such alternative remedy as it may be advised." 3. The contention of the learned SDR that while considering the question of condoning the delay sufficient cause should be liberally construed in favour of the Government cannot also detain me any further, for the simple reason that when the application for reference is filed beyond 30 days after the expiry of 60 days the Tribunal has no power to condone the delay and therefore the question of

considering the sufficiency of cause does not arise.

4. In the result, both the application for condonation of delay are dismissed. Consequently, both the applications for making reference to the High Court also fail.

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