

Modern Syntex (i) Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-11-2003

Reported in : (2004)(92)ECC238

Judge : A T V.K., P Chacko

Appellant : Modern Syntex (i) Ltd.

Respondent : Cce

Judgement :

1. The appellants had filed two refund claims, one for the duty of Rs. 1,44,68,797.43 for the period 22.7.86 to 13.7.90 and the other for the duty of Rs. 9,79,102.54 for the period 1.7.90 to 21.11.90. These claims were rejected by the original authority by order dated 30.3.2001 on the ground that the claimant could not prove that they had not passed on the burden of the above duty to their customers. An appeal against the Assistant Commissioner's order was filed with the Commissioner (Appeals) on 14.11.2002 and the same was dismissed as time-barred.

Hence, the present appeal of the party.

2. We have heard both the sides. The Counsel for the appellants gave an account of the facts pertaining to the delay involved in the filing of appeal with the lower appellate authority. The appellants' factory was lying closed since 1996 due to labour trouble. On account of the lock-out, the Assistant Commissioner's order

returned undelivered.

Though the order was subsequently (on 9.4.2001} served on Shri Rajesh Goyal, Vice-President of the company who was looking after the affairs of the closed factory, the order happened to be misplaced. It was only in November 2001 that the appellants came to know that an order had been passed on their refund applications. Subsequently, they applied for a certified copy of the order which was received on 11.10.2002. The Counsel pointed out that the appeal against the Assistant Commissioner's order had been filed within the prescribed period of sixty days from the said date (11.10.2002) on which the certified copy of the said order had been received by the appellants. However, with reference to the date (9.4.2001) on which a copy of the Assistant Commissioner's order had been delivered to Shri Rajesh Goyal, the appeal was delayed by a period of one year seven months and six days.

The learned Counsel, relying on the Allahabad High Court's judgement in *Jai Hind Bottling Company (P) Ltd v. Commissioner (Appeals)*, 2002 (83) ECC 587 (All): 2002 (146) ELT 273 submitted that there was sufficient cause in this case for condoning such delay and the Commissioner (Appeals) ought to have condoned the delay under Section 5 read with Section 29(2) of the Limitation Act, 1963. Adverting to the merits of the refund case, Counsel submitted that the appellants had a strong case on merits and, therefore, the lower appellate authority's action had resulted in miscarriage of justice. He prayed that, for the ends of justice, the delay be condoned and the Commissioner (Appeals) be directed to dispose of the assessee's appeal on its merits. In this connection, Counsel relied on the Supreme Court's order in *ITC Ltd. v Union of India*, 1998 (101) ELT 9 (SO. Reliance was also placed on the Apex Court's decision in the case of *Collector v. Mst. Katiji and Ors.*, 1987 (13) ECC 27 (SC) : 1987 (28) ELT 185 (SC).

3. The DR submitted that the Commissioner (Appeals) could condone delay of appeal upto thirty days only at the material time and that the Limitation Act was not applicable to appeals preferred to him. The learned DR relied on the Supreme Court's decisions in the cases of *Commissioner of Sales Tax v. Parson Tools and Plants*, AIR 1975 SC 1039 and *Sakuru v. Tanaji*, AIR 1985 SC 1279. It was further

submitted that the appellants had not succeeded in substantiating their plea of sufficient cause for condonation of the delay in question. Each of the decisions cited by the Counsel was sought to be distinguished on facts.

4.1 We have carefully considered the submissions. It is an admitted fact that a copy of the original authority's order had been delivered by the Central Excise Range Officer to the Vice-President of the Company on 2.4.2001 and that the appeal preferred against the order to the Commissioner (Appeals) was delayed by a period of over one year and seven months. Under Section 35 of the Central Excise Act, the Commissioner (Appeals) had no power to condone any delay in excess of thirty days as rightly observed by the lower appellate authority in the impugned order. Learned Counsel has drawn support from the Allahabad High Court's ruling in Jai Hind Bottling Company's case and argued that, notwithstanding Section 35 of the Central Excise Act, the Commissioner (Appeals) could have considered the delay condonation application of the appellants under Section 5 read with Section 29(2) of the Limitation Act.

4.2 In the Jai Hind Bottling Company's case, the High Court, following the view taken by it in Eureka Forbes Ltd. v. Union of India, 1998 (98) ELT 591 (All.), held that Section 5 read with Section 29 (2) of the Limitation Act was applicable even in a case where there was a time limit prescribed by the Special Act. Accordingly, the Court set aside an order of the Commissioner of Central Excise (Appeals), Allahabad (whereby the Commissioner had held that he had no power under Section 35 of the Central Excise Act to condone delay of more than thirty days and accordingly, dismissed as time-barred an appeal of the assessee, which had been filed with a delay of 99 days) and directed him to reconsider the assessee's application for condonation of delay of appeal under the provisions of the Limitation Act. In both the cases of M/s Eureka Forbes Ltd. and M/s Jai Hind Bottling Company (P) Ltd., the decisions were rendered by learned Single Judges of the High Court.

However, with great respect, we are unable to follow their ruling as we are bound to follow the contrary ruling given by a Division Bench of the Bombay High Court in N.B. Golangada v. Union of India and Ors., 1978 ELT J-61/A as also the ratio of

the Apex Court's decisions cited by the DR. In N.B. Golangada's case, the writ petitioner's appeal against an order of the Assistant Collector of Central Excise was received by the Appellate Collector of Central Excise three days after the expiry of the limitation prescribed under Section 35 of the Central Excise & Salt Act, 1944. The Collector rejected the appeal as time-barred. A revision application filed with the Government of India against the Collector's order was also dismissed. In the writ petition filed against those proceedings, one of the questions which arose for consideration of the High Court was whether, in the absence of specific provision in Section 35 ibid empowering the Collector to condone delay of appeals filed after the period of limitation, the Collector was competent to condone the delay by resorting to the provisions of the Limitation Act. This question was answered in the negative in paragraph 5 of the Court's judgment, which reads as under: "Then the question arises as to whether the appellate authority is competent in law to condone the delay in preferring the appeal. Here again, neither in Section 35 nor in any other provision of the Act or rules framed thereunder, there is any provision which empowers the appellate authority to condone the delay in prefer-ring appeals.

In the absence of such a provision, the Collector of Central Excise would have no power to condone the delay. Reference was made to Section 5 of the Indian Limitation Act, 1963 and it was urged that the Collector could have condoned the delay by calling for an explanation from the petitioner and on being satisfied that there was reasonable cause for preferring the appeal beyond time. We are afraid, the provisions of Section 5 will not be applicable to appeals provided in the Central Excises and Salt Act, 1944 which is a special Act which provides for appeals and prescribes a special period of limitation for appeals. The authority exercising power of appellate authority under Section 35 is not a Court and, therefore, the provisions of Section 5 could not be invoked. Moreover, in view of the provision of Section 29 also it cannot be said that the provisions of sections 4 and 5 are attracted to appeal provided under Section 35 of the Central Excise and Salt Act, 1944. In view of this legal position, the Collector of Central Excise was justified in rejecting the appeal on the ground of limitation. The revisional authority has merely confirmed the order of the Collector Excise, and we do not think that there is any justification for interfering in this petition." In the case of Parson Tools & Plants

(supra), the Hon'ble Supreme Court held that the appellate and revisional authorities under the U.P. Sales Tax Act, 1948 were not 'Courts' but only administrative tribunals and Section 14 of the Limitation Act was not applicable to them. It was also held, with reference to the scheme and language of Section 10 of the Sales Tax Act, that the intention of the Legislature was to exclude the unrestricted application of the principles of Sections 5 and 14 of the Limitation Act. Notably, Section 10 of the Sales Tax Act contained a provision similar to what was enacted in the proviso to Section 35(1) of the Central Excise Act. Their Lordships Of the Apex Court laid down the following principle; "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....." The above ruling squarely applies to the instant case and supports the impugned order. In Sakuru's case (supra) the Supreme Court has reaffirmed the view that the provisions of the Limitation Act would apply only to proceedings in "Courts" and not to appeals or applications before quasi-judicial tribunals or executive authorities.

Following the rulings of the Supreme Court and the Bombay High Court, we hold that the lower appellate authority had no power to condone any delay of appeal in excess of thirty days prescribed under the proviso to Section 35(1) of the Central Excise Act.

4.3 We note that, despite the fact that the delay of appeal in Golangada's case was only of three days, the High Court did not condone it in exercise of discretion under Article 226 of the Constitution of India. On the other hand, in the case of ITC Ltd. (supra), the Supreme Court, under Article 136 of the Constitution, permitted the appellants to file a belated appeal alongwith an application for condonation of delay with the Collector of Central Excise (Appeals) and directed that such appeal be entertained by the Collector (Appeals) notwithstanding the limitation provisions of Section 35 of the Central Excise & Salt Act. It is noteworthy that the Hon'ble Court passed the order in view of the Revenue's concession that it would not raise

the plea of time-bar against any such appeal. The Court observed thus: "In view of this direction and concession, the petitioner will have an effective alternative remedy by way of an appeal." We do not have such discretionary powers as those exercised by High Courts under Article 226 and the Supreme Court under Article 136 of the Constitution. This Tribunal has got to function within the parameters of the parent statute.

4.4 We are sitting in judgment over the impugned order of the Commissioner (Appeals). That order was passed in accordance with the explicit provisions of Section 35 of the Central Excise Act. As the Commissioner (Appeals) had no power under Section 35 to condone any delay of appeal in excess of thirty days over and above the limitation period of sixty days prescribed under the said Section and as the provisions of the Limitation Act were not applicable, the case law cited before him by the party in support of their plea for condonation of the delay of over one year and seven months was of no relevance. For the same reason, the other decision of the Supreme Court in the case of Mst. Katiji cited before us by the Counsel would also not be of any avail as, in that case, the Court was laying down guidelines for "Courts" in the matter of entertaining delay condonation application.

5. In the result, we uphold the impugned order and reject the present appeal.

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