

Collector of Central Excise Vs. Anil Starch Products Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-02-1987

Reported in : (1987)(30)ELT307TriDel

Appellant : Collector of Central Excise

Respondent : Anil Starch Products Ltd.

Judgement :

1. We have heard Shri Sundar Rajan, 3DR for the appellant-Collector of Central Excise, Ahmedabad and Shri C.S. Khambholja, Consultant for the respondents-non-applicant.

2. The impugned order was communicated to the appellant on 18-3-1982.

Memo. of Appeal dated 9-3-1983 was filed in the Tribunal on 4-3-1983.

In application for condonation of delay dated 9-3-1983 signed by Shri N.V. Jotwani, Assistant Collector (Legal) it is urged that before commencement of Customs Excise and Gold Control Appellate Tribunal on 11-10-1982 the matter and implication of revenue was under study. This caused the delay and delay in filing appeal may be condoned. In another miscellaneous petition dated 7-10-1986 it is, inter alia, urged that after receipt of the impugned order dated 18-3-1982 by Collector of Central Excise, Baroda under whose charge the matter fell at the relevant time i.e. till 1-9-1983, the Collector called for A.C's comments on 8-4-1982. The Assistant Collector was reminded and he had by his letter dated 2-4-

1982 called for records from Collector (Appeals). The petition goes on to say that the delay was caused in correspondence. Further the Collector desired to ascertain the manufacturing activity of the unit in respect of the product Carbon Waste Liquor and had asked for the production figures for the month of January, 1983. The Collector decided to file appeal on 25-2-1983. Then he authorised Assistant Collector (Legal) to file appeal and appeal was filed on 9-3-1983 with a request to condone the delay in filing appeal.

A date chart accompanies this miscellaneous petition. The date chart shows movement of file between 18-3-1982 i.e. receipt of order by Collector of Central Excise, Baroda till appeal was despatched to the Tribunal on 9-3-1983.

3. Under Sub-section (3) of Section 35B every appeal under this Section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Collector of Central Excise, or, as the case may be, the other party preferring the appeal. In this case the impugned order was communicated to the appellant-Collector of Central Excise on 18-3-1982. The Tribunal was set up on 11-10-1982 i.e., more than six months after the date of communication of the order. Removal of Difficulties Order 1982 providing for six months limitation from the date of communication of the order as an interim measure would not be applicable on these facts.

None of the parties also referred to or relied on this provision.

4. At the hearing of the application Shri Sundar Rajan did not rely on Section 6 of the General Clauses Act, 1897. He, however, placed reliance on a decision of the Tribunal in Collector of Central Excise, Baroda v. Sarabhai Chemicals Final Order Nos. 378 & 379/86-C, dated 2-7-1986. Relying on the same he submitted that earlier before the Tribunal was set up the Revenue had the remedy of exercise of revisionary power by the Government for which limitation was one year.

In fact, the appellant-Collector had taken steps so that Government could exercise this power. However, in the meanwhile, law was amended and the Tribunal set up and instead of the earlier remedy of revision, right of appeal conferred. Therefore, the appellant in the matter of appeal should have the same limitation of one year

which Was available in the case of exercise of review or revisionary powers.

5. Controverting Shri Sundar Rajan's submissions, Shri Khambholja submitted that on the date the impugned order was communicated to the Collector of Central Excise he had no right of filing appeal on the date of receipt of the order. Therefore, he could not take benefit of Section 35B of the Act by filing an appeal to the Appellate Tribunal.

6. Taking up first the question of limitation under Section 35B, subsection (3) is quite clear that appeal has to be filed within three months from the date on which the order sought to be appealed against is communicated to the Collector of Central Excise, or, as the case may be, the other party preferring the appeal. Admittedly and undoubtedly the appeal had been presented long after limitation under this provision had expired. It is not for us to say as to what should happen if limitation expired before the Tribunal was set up.

7. As for Shri Sundar Rajan's reliance on the decision of the Tribunal in Collector of Central Excise v. Sarabhai Chemicals, that case was concerned with effect of limitation of two years earlier stipulated under Section 35E (4) being reduced to a shorter period of one year for examining the legality or correctness of an order passed by a subordinate authority and then directing filing of an application to be treated as an appeal; that decision is not in point in the present appeal. Right of appeal to the Revenue was conferred for the first time only on 11-10-1982 and earlier there was the remedy of revision available to the Revenue. The two, right of appeal and remedy of revision, are well understood to be different in scope nature and content. Merely because earlier the Revenue had remedy of revision for which the limitation of one year was available would not mean that they should in absence of provision to that effect in law have the same limitation particularly when the provision itself is clear that limitation would be three months from the date of communication of the impugned order.

8. As for Shri Sundar Rajan's argument that earlier for revision before amendment of the Act there was limitation of one year and after amendment right of appeal was conferred with a shorter period of limitation of three months and therefore delay may be condoned, it is sufficient to say that Tribunal had come

into,existence on 11-10-1982.

The appeal is presented long after three months from 11-10-1982. No case therefore for condonation of delay is made out.

9. As a result, the appeal is held barred by limitation and rejected on that ground.

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