

Collector of Central Excise Vs. Tisco

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-04-1987

Reported in : (1987)(12)LC1143Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Tisco

Judgement :

1. The department has filed this appeal against the order of the Appellate Collector, Central Excise, Calcutta dated 8-2-1982. When the appeal was about to be heard on merits, Shri Ravinder Narain, Advocate for the respondents raised an objection that the appeal is time barred.

There is also an application for condonation of delay. Hence we heard arguments on the application.

2. Shri J.N. Nigam, SDR submitted that the order-in-appeal is dated 8-2-1982 and as the matter was referred to the Central Board of Excise and their views were obtained on 24-5-1983. Thereafter, the appeal was filed before the Tribunal on 21-6-1983. He, therefore, submitted that the delay may be condoned. Shri Ravinder Narain, urged that there was inordinate delay in filing the appeal and that the proceedings were taken to write to the Board only on 10-11-1982. There was a delay of 385 days and there are no grounds to condone the delay. He also cited 1987 (28) ELT 584 (Tribunal)(C.C.E., Kanpur v. Ram Nath Kumar). In that case, it was held that whether it is a Government or private party, the provisions of law

applicable are the same unless the statute makes a distinction.(Collector of Customs, Bombay v. Parkar Corporation)(Tribunal) (C.C.E., Madras v. Lucas T.V.S.Ltd., Madras), the Tribunal has observed that the applicant had to adjust his internal correspondence/affairs in his own way. The SDR drew our attention to the ruling reported in 1987 (28) ELT 185 (Collector, Land Acquisition Anantnag and Anr. v. Mst. Katiji and Ors.), where the Supreme Court has observed, "The expression 'Sufficient Cause' employed by the legislature was adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institutions of the courts." 5. We have carefully considered the pleas of both the parties.

Admittedly, there is a delay of 385 days in filing the appeal. There is no application as such for condonation of delay but merely a letter addressed to the Registrar setting out that the appeal could not be filed before the Tribunal within the period prescribed in Section 35B(3) of the Central Excises and Salt Act, 1944 for the reasons that the matter was referred to the Central Board of Excise and Customs who directed the appeal to be filed on 24-5-1983. We find that the order-in-appeal was passed on 8-2-1982. According to the appellants, they received the order on 25-2-1982. We notice that it was only on 10-11-1982 that the proposals were sent to the Board. The letter of the Board dated 24-5-1983 makes reference to this aspect. It is manifest that even the very proposal for initiating the appeal was taken after more than eight months. We do not have any particulars as to why there was such an inordinate delay in moving the Board. We find that the Board has approved the proposal on 24-5-1983 and the appeal was filed nearly a month thereafter. These facets of the case indicate that it was mere negligence or inadvertence that has caused the delay. If the department has not taken expeditious steps to impugn the order by appropriate proceedings, the rights of the other party should not be affected. The decision of the Supreme Court cited by the SDR has no relevancy to the present facts. From the facts of that case, we notice that it was a decision regarding the enhancement of compensation. The delay was merely 4 days. Making a justice oriented approach, the Hon'ble Supreme Court held that there was sufficient cause in condoning the delay. This decision cannot be pressed into service in a case whether the delay may either be deliberate or on account of negligence.

The inordinate and long delay in the case shows that there is no sufficient cause to condone the delay. The application for condonation of delay is rejected. Consequently, the appeal also stands rejected.

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