

Collector of Customs Vs. Tools and Gauges

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-06-1987

Reported in : (1989)(22)LC8Tri(Delhi)

Appellant : Collector of Customs

Respondent : Tools and Gauges

Advocate for Def. : Shri. Nankani

Judgement :

1. These 3 applications for delay condonations are by the Collector of Customs, Airport. As these involve common questions of facts and law, at the instance of both the sides, they are clubbed, together, heard together. Hence this common order.

2. The brief facts are that the Collector of Customs (Appeals), Bombay, clubbed 3 appeals filed against 3 orders in original and passed a common order bearing No. S/49-475, 476 and 478 of 85, on 18.2.86. This order according to the information furnished against col. number 3 in the appeal memo was communicated on 13.3.86. The Collector of Customs, Airport, Bombay, by his order dated 13.10.86 authorised filing of 3 appeals against the order of the Collector (Appeals) under Sub-section (2) of Section 129-A of the Customs Act. In pursuance of the said authorisation 3 appeals came to be filled on 17.10.86. Three delay condonation applications were filed and all the 3 applications are identically worded. It is stated in these applications that "the order-in-appeal No. S/49-475, 476 & 478/85L dated

10.2.86 was received in the Air Cargo Complex on 13.3.86, but was brought to the notice of the Collector Airport only on 14.8.86 who felt that relevant records had been deliberately suppressed by the dealing staff. By this time the time limits stipulated under Section 129A(3) of the Customs Act, 1962 has already expired. However, the undersigned was informed that an appeal against our identical order was already filed in the C.E.G.A.T. on 29.4.86 in the case of M/s. Bhagat & Sons by the Collector of Customs, New Customs House, Bombay and is still pending for decision with the Hon'ble C.E.G.A.T. In the circumstances, the undersigned is unable to honour the decision of the learned Collector (Appeals) passed on 18.2.86. The necessary appeal papers are being submitted along with this prayer for consideration of the Tribunal.

In the circumstances explained above, the undersigned prays to the Hon'ble Tribunal to be pleased to condone the delay for filing this appeal and admit the same for a decision in conjunction with the appeal already resting with this Hon'ble Tribunal in the case of Bhagat & Sons v. Collector of Customs, Bombay 3. When these applications were taken up for consideration Shri Pattekar appearing for the Collector submitted that since the impugned order came to the notice of the Collector only on 14.8.86, the appeals filed by the Collector on 17.10.86 are within time and strictly speaking there was no delay at all in filing the appeals and condonation of delay strictly would not arise. But then since the impugned order was received in the Air Cargo Complex on 13.3.86 the Collector considered fit and proper to file the present applications as a measure of abundant caution. It was urged by Shri Pattekar that a serious allegation had been made by the Collector in the application, namely, that his staff had deliberately suppressed the receipt of the impugned order and brought to the notice of the Collector only on 14.4.86. Having regard to the said serious allegations even if the Tribunal considered that there was a delay in filing the appeals necessary ground had been made out to condone the delay and he therefore prayed that the appeal may be condone.

4. Shri Nankani appearing for the respondents however vehemently opposed the applications for condonation of delay. Firstly, he contended that they are not supported by any affidavits. Secondly, he contended that so-called affidavit of one Shri Prem Shankar is not an affidavit in support of the application, it purported to

be an affidavit in support of the stay application. Further, the affidavit itself was not sworn before a proper authority. Thirdly, Shri Nankani submitted that during the pendency of these applications a request for filing an affidavit was made by the department and an opportunity was also given to the department and the department was asked to clarify by means of an affidavit whether any instructions had been given to anybody in his office to receive notice, orders, etc. on his behalf; secondly that he received the copy of the order appealed against only on 18.6.86 and thirdly that his subordinates have deliberately suppressed the receipt of the order appealed against. But then the Collector had not chosen to file such an affidavit. When that being the case the applications do not merit any consideration. It was further submitted by Shri Nankani that the contention of Shri Pattekar that the Collector came to know of the order only on 14.8.86 is not correct. In the appeals filed by the Collector the date of communication of the impugned order was shown as 13.3.86. It was also submitted by Shri Nankani that by reason of the standing order issued by the Collector of Customs, Bombay, communications including the orders are received by the Asstt. Collector of Customs, Tribunal Co-ordination Unit and the service of notice or order on the Asstt. Collector Tribunal Co-ordination Unit is to be considered as the service on the Collector and since such a service had taken place on 13.3.86 the appeals filed on 17.10.86 which is beyond the period of 3 months are clearly barred by limitation. Shri Nankani relied on the order of the Special Bench bearing No. 155/1986-B2 in Collector of Customs, Bombay v. Adarsha Chemicals & Fertilizers, Bombay. Shri Nankani urged that the Special Bench in the above order relying on its earlier order-in-appeal No.1942 of 85 to 1945 of 85 had held that the date of service of the order on the Asstt. Collector was the date of service on the Collector of Customs and the ratio of the Special Bench applies to the facts of the present cases. Shri Nankani also referred to another decision of the Special Bench B2 reported in 1987 (10) ECR 369 Collector of Customs, Bombay v. Kirloskar Cummins Ltd. Shri Nankani urged that the Special Bench B2 after considering the order of this Bench in M/s. Thermax Pvt.

Ltd. as well as the judgment of the Bombay High Court reported in AIR 1986 (Bom.) 246 it refused to condone the delay. He therefore prayed that the applications may be rejected.

5. Shri Paliekar appearing for the Collector however submitted that even though an opportunity had been given to file the affidavit of the Collector, unfortunately, the Collector concerned was under order of transfer and had even handed over charge and in the said circumstances the affidavit of the Collector could not be filed.

6. I have carefully considered the submission made on both the sides.

The impugned order is dated 18.2.86. According to the information furnished against col. No. 3 the date of communication was 13.3.86. The appeals ought to have been filed within 3 months from the said date, i.e. on or before 13.0.86. But the appeals were actually received in the Tribunal's office on 17.10.86. If 13.3.86 is taken as the date of communication there is a delay of 4 months and 4 days. In the applications, the Collector had, however, stated that the impugned order came to his notice only on 14.8.86. Though this statement was not made on oath, the respondents who had an opportunity to controvert the statement did not choose to file any counter-statement or any affidavit controverting the statement made by the Collector in the applications.

The contention of Shri Nankani was that having regard to the standing instructions issued by the Collector the notices and orders required to be served on the Collector were being received by the Asstl. Collector Tribunal Coordination Unit. The date of communication mentioned in the appeals are the dates on which the Asstt. Collector had received the orders and therefore for the purpose of limitation the date 13.3.86 should be reckoned and not the date 14.8.86 as alleged by the Collector in his applications.

7. The impugned orders were passed by the Collector of Customs (Appeals). Sub-section (5) of Section 128 A requires the Collector (Appeals) to communicate the order passed by him to the appellants; the adjudicating authority and the Collector of Customs. This is a statutory requirement. The contention of Shri Nankani was that this statutory requirement had been complied with inasmuch as the Asstt.

Collector Tribunal Co-ordination Unit had received the order in pursuance of the standing instructions issued by the Collector of Customs, Bombay. Shri Nankani

had not chosen to produce the copies of the standing instructions stated to have been issued by the Collector of Customs, Bombay. Shri Nankani has however relied on the decision of the Special Bench B2 in M/s. Adarsha Chemicals & Fertilizers Bombay.

Relying on its earlier decision in Appeal No. 1942/85 to 1945/85-C, the Special Bench B2 did hold that the statutory requirement of communication of the order by the Collector (Appeals) is satisfied if the communication had been made to the Asstt. Collector of Customs, Refund. But then this Bench in M/s. Thermax Pvt. Ltd. in order Mo.

60/86 WRB dated 4.8.86 however had taken a view different from the view taken by the Special Bench. In the absence of clear evidence regarding issue of authorisation by the Collector to the Asstt. Collector, Tribunal Co-ordination Unit to receive the orders on his behalf the order communicated to the Asstt. Collector cannot be treated as communication to the Collector. If that be so, the impugned order came to the notice of the Collector only on 14.8.86 and the appeals filed within 3 months from that date should be considered as filed within the period of limitation. In that view of the matter question of delay or condoning the delay would not strictly arise.

8. Let me now proceed on the footing that there was communication to the Collector since the impugned order was communicated to the Asstt.

Collector, Tribunal Coordination Unit on 13.3.86. The question that would arise in that event is whether the delay of 4 months and 4 days requires to be condoned. In the matter of condonation of delay precedents have no part to play. Each case depends upon the facts and circumstances of the case. Delay condonation is discretionary. The discretion however has to be exercised on sound principles and not arbitrarily or capriciously. In all the 3 applications the Collector has categorically stated that the staff in the Air Cargo Complex had deliberately suppressed the receipt of the impugned order from the notice of the Collector and impugned orders were brought to this notice of the Collector only on 14.8.86. That part of the Collector's statement has not been controverted at all. It is in this context the observation made by the Bombay High Court in Bank of India v. Javed

Textiles and Ors. (AIR 1986 Bombay 246) becomes relevant. In the Bombay High Court case the delay was 339 days. The High Court observed "what weights with us in condoning the delay is the fact that public institutions like banks in the present case, should not be treated on par with private individuals and institutions. The property of the public institutions belongs to the society in general and not to any individual or group of individuals in particular. Precisely for this reason, it appears that no particular individual is interested in safeguarding its. What belong to all belongs to none in particular.

The affairs of public institutions are managed by paid employees, some of whom are interested only in their salaries. As long as their salaries and jobs are not threatened, they take the least care in safeguarding the interests of the institutions they serve. In the hierarchy of responsibility in the bureaucratic set up which invariably accompanies these institutions, the responsibility for the loss to the institution is hard to fix, and the employees take advantage of the same. What is more, with the growing corruption in varied forms, it is not difficult for interested parties to manage delays in taking legal proceedings against the debts of these institutions. If the Courts take a strict view of the matter without taking into consideration these realities, they will unwittingly become parties to these malpractices....In all cases where public institutions such as banks are involved the stakes are bound to be high. It will not be difficult for unscrupulous persons to make a regular business out of deliberate delays in taking appropriate legal proceedings against the debtors. We do not suggest that the present is one such case. We are only uttering a word of caution against taking a mechanical view of the provisions of the law of limitation in such matters. As a matter of fact, the public institutions should not be hamstrung by any period of limitation. In the alternative there should be a special limitation provision for them. This however is a matter which the legislature has to tackle".

9. The case on hand is stronger than the case dealt by the Bombay High Court. The Collector had made an allegation that his staff has deliberately suppressed from his knowledge the receipt of the impugned order. It may not be out of place to refer to the latest pronouncement of the Supreme Court in the matter of condonation of delay. In Collector, Land Acquisition, Anantnag and Anr. v. A/57".

Katiji and Ors. [1987 (28) E.L.T. 185 SC], the Supreme Court observed "to condone, or not to condone, is not the only question. Whether or not to apply the same standard in applying the "sufficient cause" test to all the litigants regardless of their personality in the said context is another.

The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression 'sufficient cause" employed by the legislature is 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 institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides . A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grapped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so".

9. In the instant case it cannot be contended nor it is contended that there was a wanton delay on the part of the Collector. No malafide or negligence on his part is allege.

10. If we have regard to the weighty observations of the Supreme Court in the case referred to above, the present applications deserves to be allowed and accordingly I allow these applications and condone the delay, if any, and direct that all the appeals be admitted.

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