

Simplex Electronics Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-23-1987

Reported in : (1989)(42)ELT451TriDel

Appellant : Simplex Electronics

Respondent : Collector of Customs

Judgement :

1. Simplex Electronics, Ahmedabad had filed an appeal being aggrieved from order in appeal No. S/49-696/85-T.E., dated 2-1-1987 passed by Collector of Customs (Appeals), Bombay. The said appeal was received in the Registry on 30-3-1987. The Ld. Collector of Customs (Appeals) had disposed of two orders in original Nos. S/40/108 and 109/84H, dated 24-5-1985 passed by Assistant Collector of Customs, Bombay by a single consolidated order. Subsequently the appellant filed another appeal with an application for condonation of delay which was presented in the Registry duly supported with an affidavit sworn before a Notary Public on 20-5-1987.

2. Shri D.G. Trivedi, Ld. Advocate, has appeared on behalf of the appellant. He has pleaded that the delay in the filing of the subsequent appeal viz. A.No. C1571/87-B2 may be condoned as the first appeal was filed within the stipulated period provided under Section 129A of the Customs Act, 1962. He has reiterated the contentions made in the application for condonation of delay.

3. Shri D.K. Saha, Ld. JDR, does not oppose the condonation of delay as the first appeal was filed by the appellant within the stipulated period.
4. After hearing both the sides we hold that the appellant was prevented by sufficient cause in the late filing of appeal No.C/1571/87-B2. Accordingly we condone the delay.
5. The appellants have also moved two miscellaneous applications in terms of Rule 22 of the Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982. Shri D.G. Trivedi, Ld. Advocate, has pleaded that the appellant has filed these miscellaneous applications as an abundant precaution though under the law Rule 22 of the Customs Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 is not applicable as Simplex Electronics came into existence with effect from 1-4-1973 vide partnership deed dated 10-4-1973 consisting of Jitendra Chandrakant Mehta and Shirish Gordhanbhai Patel both residents of Ahmedabad having 50% share each. Shri Trivedi states that subsequently there was a change in the partnership with effect from 1-4-1986 vide partnership deed dated 15-4-1986 and M/s. Starvox Electronics Pvt. Ltd, a company incorporated under the Companies Act, 1956, became a partner having 10 paise share in the firm and vide retirement deed dated 15-6-1986 the two other partners namely Shri Jitendra Chandrakant Mehta and Shri Shirish Gordhandas Patel retired from the firm and the company M/s. Starvox Electronics (Pvt.) Ltd. had taken over the assets and liabilities of the firm. He fairly states that Rule 22 of the Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 is not applicable in this case; and the application may be disposed of by the Tribunal on merits.
6. Shri O.K. Saha, Ld. JDR, states that Rule 22 of the Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules is not applicable in this case. He pleads that Revenue's interest should be protected and leaves it to the Bench.
7. On merits, Shri D.G. Trivedi, Ld. Advocate, has pleaded that the Collector of Customs (Appeals) had dismissed the appeal filed by the appellant on the ground of limitation without granting any opportunity of personal hearing. He pleads that the order in original was received by the appellant on 31-5-1985 and as such the

appeals should have been filed to the Collector of Customs (Appeals) within 3 months from the date of receipt of order in original. Shri Trivedi has stated that the appellant had sent the appeal per registered A.D. post to the Collector of Customs (Appeals), Bombay and the appeal was received in the office of the Collector of Customs (Appeals) on 4-9-1985. Shri Trivedi states that the Ld. Collector of Customs (Appeals) before dismissing the appeal should have granted a personal hearing to the appellants and even otherwise the appellant's case is fully covered by Hon'ble Gujarat High Court judgment in the case of Narandas Vallabhratn Parmar and Anr.

v. The Union of India and Ors. reported in 1978 ELT J-695 where the Hon'ble Gujarat High Court had held that where an appeal is despatched before the expiry of the limitation by registered post to the appellate authority at the correct postal address, the fact that it was received beyond the period of limitation would not render it barred by limitation. He has also relied on another judgment of the Hon'ble Allahabad High Court in the case of Jhabboo Lal Kesara Rolling Mitts v. Union of India and Ors. reported in 1985 (19) ELT 367. He states that the Hon'ble Allahabad High Court had followed the Gujarat High Court judgment. He has pleaded that the Collector of Customs (Appeals) did not go into the merits of the appeal and as such the matter may be remanded to the Collector of Customs (Appeals), Bombay. Shri Trivedi, Ld. Advocate, has produced the original postal acknowledgement receipt hi the court and has also shown the same to the Ld. JDR, Shri D.K.Saha.

8. Shri D.K. Saha, the Ld. JDR, who has appeared on behalf of the respondent, states that the appeals were received in the office of the Collector of Customs (Appeals) after the expiry of limitation. He states that the appeals should have been filed and received in the office of Collector of Customs (Appeals) before the expiry of limitation. He further states that he has seen the original postal receipt as well as acknowledgement receipt but states that the appeals should have been received in the office of the Collector of Customs (Appeals) before expiry of limitation. He has pleaded that since there was delay in the filing of appeals before the Collector of Customs (Appeals) the appeals filed before the Tribunal should be dismissed.

9. We have heard both sides and have gone through the facts and circumstances of the case. We have also gone through the judgments cited by the appellant. The appellant's case is fully covered by the decision of the Hon'ble Gujarat High Court in the case of Narandas Vallabhram Parmar and Anr. v. The Union of India and Ors. reported in 1978 ELT J-695 which was followed by the Hon'ble Allahabad High Court in the case of Jhabboo Lal Kesara Rolling Mills v. Union of India and Ors. reported in 1985 (19) ELT 367. The appellant had despatched the appeal before the expiry of limitation on 28-8-1985 and as such it should be deemed that the appeal was filed by the appellant in time.

Keeping in view the fact that the residence of the appellant is at Ahmedabad which is within the jurisdiction of the Hon'ble Gujarat High Court. Accordingly we set aside the impugned orders and remand the matters to the Collector of Customs (Appeals), Bombay with a direction that he should grant personal hearing to the appellants and decide the matter in accordance with law. We further direct that while deciding the appeals, the Ld. Collector of Customs (Appeals) will duly take into consideration the factum of taking over of the assets and liabilities of the erstwhile firm by the company M/s. Starvox Electronics (Pvt.) Ltd. Accordingly we dispose of the miscellaneous applications filed by the appellant in these terms. The appeals are allowed by way of remand.

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