**Globe Traders Vs. Union of India (Uoi)**

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**SooperKanoon Citation** : sooperkanoon.com/369866

**Court** : Mumbai

**Decided On :** Aug-26-2002

**Reported in** : 2004(174)ELT434(Bom)

**Judge** : V.C. Daga and ;J.P. Devadhar, JJ.

**Acts** : Customs Act, 1962 - Sections 129A

**Appeal No.** : Writ Petition No. 1885 of 2002

**Appellant** : Globe Traders

**Respondent** : Union of India (Uoi)

**Advocate for Def.** : S.M. Shah and ;S.V. Bharucha, Advs.

**Advocate for Pet/Ap.** : H.R. Shetty, Adv.

**Disposition** : Petition allowed

**Judgement** :
ORDER

1. Heard rival contentions.

2. Petitioners are seeking to challenge the order of CEGAT dated 21-3-2002 (Page 43), refusing to condone delay of 13 months.

3. Shorn of all unnecessary details, the facts in nutshell are : The petitioners had preferred an appeal before the Commissioner of Customs, to challenge the order of the Deputy Commissioner of Customs, Bombay, dated 15-3-1982. However, the Commissioner of Customs (Appeals) was pleased to reject the said appeal by his reasoned order dated 16-3-1982.

4. The petitioners not satisfied with the aforesaid order preferred writ petition being Writ Petition No. 1494 of 1983 so as to challenge the order of the Commissioner of Customs (Appeals) dated 15-3-1982. The said petition was ruled on I7th June, 1983. The said writ petition came up for final hearing before the Division Bench of this Court on 11-10-1991, wherein this Court was pleased to relegate the petitioners to remedy of appeal to be filed within 2 weeks from the date of the order. The respondents therein had agreed not to raise any objection with regard to the delayed presentation of appeal. The said writ petition was thus allowed to be withdrawn giving liberty to the petitioners to prefer appeal before the CEGAT.

5. The petitioners could not prefer appeal within the prescribed period of two weeks pursuant to the order of this Court dated 11-10-1991, with the result, petitioners got the period for presenting the appeal extended. This Court by subsequent order dated 31-10-1991 extended the period for filing appeal before the Tribunal by two weeks from 31-10-1991, while other terms of the order dated 11-10-1991 remained the same.

6. It appears that during this extended period the petitioners came across one judgment of the CEGAT in the case of Krishnaraj Metal Industries v. Collector of Customs wherein the registry of the Tribunal had directed the transfer of the similar appeal involving issue of drawback to the Joint Secretary to the Government of India, New Delhi. The petitioner under bona fide belief that the matter being similar one involving issue of drawback, the revision would lie with the Government of India in terms of proviso to Section 129A. Accordingly, petitioners preferred revision petition before the Government of India, which ultimately came to be dismissed for want of jurisdiction. The petitioners thereafter preferred appeal before the CEGAT. It is thus clear that the petitioners on the wrong legal advice filed revision instead of appeal before the CEGAT. The said

revision application as stated herein above, was heard by the Joint Secretary to the Government of India and by his order dated 12-10-1992 he was pleased to hold that he did not have jurisdiction and directed the petitioners to move the CEGAT in the matter if they so desire.

7. It appears that on 30-11-1992 Appeal being Appeal No. C/772/92 was filed along with application for condonation of delay before the CEGAT. In the said application for condonation of delay, petitioners explained the reason for delay, which was mainly due to prosecuting the wrong remedy before a wrong forum due to mistaken legal advice. The application seeking condonation of delay came to be rejected. This is how the petitioners are before this Court by way of this petition.

8. At the outset, it is surprising to note that the said application for condonation of delay was kept pending by the CEGAT right from the year 1992 till 2002 i.e. for 10 years and after 10 years the application seeking condonation of delay was dismissed by the Tribunal and consequently the appeal is held to be barred by limitation. Such enormous delay in considering application for condonation of delay by the CEGAT cannot be justified on any count. Such application ought to be considered and disposed of within a reasonable time.

9. The petitioners submitted that in view of the judgment in the case of Krishnaraj Metal Industries v. Collector of Customs the petitioners were wrongly advised to file revision before the Joint Secretary to the Government of India, New Delhi. Considering the bona fides of the petitioners and considering the fact that application was pending before the Tribunal for more than 10 years, this is a fit case for condonation of delay and the CEGAT ought to have exercised jurisdiction in favour of the petitioners to condone the delay in filing appeal.

10. In this view of the submissions, we are satisfied that due to the judgment in the case of Krishnaraj Metal Industries (supra), the petitioners got misled due to wrong legal advice. This, in our view, would constitute sufficient cause for condonation of delay. We, therefore, hold that sufficient cause has been made out by the petitioners to condone delay in filing appeal subject to payment of costs quantified in the sum of Rs. 5,000/- (Five thousand) to be deposited with the CEGAT. We accordingly set aside the impugned order and condone the delay in filing appeal

before CEGAT. The proceeding is remitted back to the CEGAT for deciding the appeal on its own merits in accordance with law, as expeditiously as possible at any rate, within a period of six months from the date of receipt of writ from this Court.

11. In the result, petition is allowed. Rule is made absolute in terms of this order with no order as to costs.

Certified copy expedited.