

Dynamic Hydraulics Vs. Collector of Customs

Dynamic Hydraulics Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/3772

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-27-1987

Reported in : (1987)(32)ELT77Tri(Mum.)bai

Appellant : Dynamic Hydraulics

Respondent : Collector of Customs

Judgement :

1. The prayer in these applications is identical, namely, to condone the delay of 85 days in filing the appeals.

2. Appearing for the applicants Shri Srinivasan submitted that the impugned orders were communicated on 13-12-1986 and the appeals were filed on 8-6-1987. Thus, there was a delay of 85 days. He submitted that immediately after Collector's order, the applicants approached the Central Board of Excise and Customs for warehousing the goods and as a special case the Central Board of Excise and Customs permitted storage of the goods under Section 49 of the Customs Act. Thereafter the appellants entrusted the documents to Shri K. Srinivasan (Consultant) and Shri Srinivasan was to prepare appeals during the first week of February 1987. But unfortunately on 26-1-1987 his mother suffered from a heart attack; therefore, he had to rush to Hyderabad. Shri Srinivasan further submitted that on 13-1-1987 the officers of the Directorate of Enforcement searched the office premises as well as the factory premises of the appellants and all the documents were taken possession of. The Chief Executives were outside India and in order to expedite the investigation they were called back. Requests were

made to the enforcing agency to return the seized documents. But then the enforcement agency had refused to return the documents. After considerable efforts the appellants were able to secure copies of required documents from the clearing agency and other concerned and they filed the appeals on 8-6-1987 and, therefore, Shri Srinivasan prayed that the delay may be condoned. He also submitted that the portion of the adjudication order is without jurisdiction is as much as there had been no show cause notice in respect of adding 20% of the value. He submitted that when there is meritorious case the same should not be rejected on the ground of technicality.

3. Shri Pal appearing for the collector vehemently opposed these applications. He contended that all these applications lack bona fide.

He urged that there is not only no cause much less sufficient cause to condone the delay. Shri Pal further submitted that there were no compelling circumstances which prevented the applicants from filing the appeals within the prescribed period of limitation. He urged that the appellants could have applied for the copies instead of asking for the return of the documents. No such steps had been taken. It was also urged by Shri Pal that the value of the right had accrued to the respondent by reason of not filing the appeals within the prescribed period of limitation and, therefore, the discretion should not be light-heartedly disturbed. In this connection Shri Pal placed reliance on the decision of the Supreme Court reported in AIR 1962 SC page 361.

Shri Pal further submitted that the request to the enforcement agency for return of documents was made 17 days after the period of limitation. Shri Pal controverted Shri Srinivasan's submission that the customs did not return the Manual. In that connection Shri Pal pointed out that the letter dated 27-1-1987 and the receipt of the Manual by the appellant's representative. Shri Pal also submitted that in the month of February 1987 the appellants had written two letters to the collector and in none of these letters they have made any request for return of documents. Shri Pal finally submitted that delay cannot be condoned as a matter of right. The delay in this case is due to negligence, inaction and, therefore, there is no bona fide in any of these applications and they may be rejected.

4. In reply, Shri Srinivasan contended that even though written request to the enforcement agency was made 17 days after the period of limitation, in the very letter earlier request orally made have been indicated. He also relied upon the decision of the Supreme Court reported in 1987 (28) ELT 185. He laid stress on the six principles laid down in the said judgment.

5. We have carefully considered the submissions made on both the sides.

Shri Pal did not dispute that the enforcement agency had searched the premises of the appellants on 30-1-1987 and took possession of all the documents. The contention of Shri Pal was the appellants could have obtained copies instead of seeking for return. The preparation of appeals requires consideration of all the documents. So if the appellants in the circumstances thought that the original should be looked into for preparing appeals, it cannot be said that there had been inaction on their part or lack bonafide. The appellants are not required to give any explanation for the delay which had occurred before the prescribed period. As a matter of fact, in this case, even that had been explained by stating that the Consultant who was entrusted to prepare the appeals could not do so due to the serious ailment of his mother. On consideration of all the facts, we are unable to accept Shri Pal's contention that there is inaction and want on delay on the part of the appellants. As has been laid down by the Supreme Court in the case of Anantnag 1987 (28) ELT 185, the Courts are required to take a very liberal approach in the matter of condonation of delay. The Court had cautioned that the liberal approach which the Supreme Court has been taking had not permeated to the lower authorities. The Court has also observed non-deliberate delay should not be made a ground to reject a substantial cause. Taking a pragmatic approach, we are satisfied that the delay was not deliberate. There was no culpable negligence or mala fide on the part of the applicants and as such, we allow all these applications; condone the delay and direct that the appeals be admitted.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com