

Collector of Customs Vs. Ruby Products Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-28-1987

Reported in : (1987)(13)LC1275Tri(Delhi)

Appellant : Collector of Customs

Respondent : Ruby Products Limited

Judgement :

1. This application has been filed by the Collector of Customs, Bombay, for condonation of delay in filing the appeal No. C/1259/85-C. In the CA-3 Form filed by the Collector of Customs with the Memorandum of Appeal, the date of the communication of the Order appealed against is shown as 25.3.1985 and the appeal has been received in the Registry on 16.7.1985. The Assistant Collector of Customs, Tribunal Coordination Unit, Bombay, who has been authorised by the Collector to file the appeal and the application for condonation of delay in filing the appeal, has stated in this application that the time limit to file the appeal -expired on 25.6.1985 and that the Collector had passed the orders for filing the appeal on that date but due to paucity of staff and also for the reason that the office machine for photo copying was out of order since 7.6.1985, the appeal could not be filed in time. He has pleaded that if Collector (Appeals)' s order was allowed to stand being not legal and proper order, it will have adverse effect on revenue and has requested for condonation of delay. The matter came up for hearing earlier when the respondent's advocate was also present.

The Revenue put forward the plea that the limitation should run from the time when the Collector came to know about the Collector (Appeals)'s order, that is, when the same was put up to him. The plea being that the Collector (Appeals) order was not received by Collector of Customs as no copy of the order of the Collector (Appeals) was endorsed to him. In that view of the matter, he pleaded, that there was no delay involved in filing the appeal.

2. The learned Departmental Representative was asked to give copy of the order of the Collector of Customs under which procedure for the receipt of the order from the Collector (Appeals) had been prescribed.

The matter came up for hearing again and time was sought by the department representative. When the matter came up for hearing later on, the departmental representative pleaded for time for filing an affidavit in support of the pleas made earlier. In the affidavit filed on behalf of the Collector, the plea has been taken that the impugned order of the Collector of Customs (Appeals) had not been served on him and that the service of the same on any person other than him cannot be taken to be fulfilling the legal requirement of Section 128(5). In this view of the matter it has been pleaded, time for filing the appeal reckoned from the time the said order came to his notice, had not run out. In this affidavit it has been pleaded that the order of the Collector (Appeals) had been received by the adjudicating authority on 11.4.1985 and the papers were processed thereafter. The date chart of the movement of file thereafter has been given in this affidavit. The same for convenience of reference is reproduced as under :adjudicating authority 11.4.1985 File sent to concerned Group for scrutiny and study of Appellate Order 26.4.1985 File received in the concerned dealing Group on 24.6.1985 Proposal for filing the appeal put up to Collector on 24.6.1985 Collector approves and orders for filing of the appeal 24.6.1985 File received back in T.C.U. for preparation of and filing of appeal 26.6.1985 Preparation of appeals and completion of other formalities 8.7.1985 Appeal despatched on 10.7.1985" 3. The respondents have also filed a reply affidavit and they have pleaded that the impugned order had been served on the Assistant Collector, Tribunal Coordination Unit, Bombay and the service of the order on the Collector was complete inasmuch as the said Assistant Collector was the agent of the Collector and in terms of Section 153 of the Customs Act, 1962

order could be served on the person for whom it was intended or on his agent. They cited the order of the Tribunal in case of Collector of Customs, Bombay v. S.B. Plastic Industries : 1986 (26) ELT 124 wherein this plea taken by the learned Collector has been negated after taking note of standing orders, of the Collector No.6756 dated 25.6.1981 and 25.1.1985 whereby the Collector has asked for a copy of the orders of the Collector (Appeals) to be sent to the Assistant Collector, Coordination Unit in the office of the Collector of Customs. By this order, they have pleaded, the Tribunal has held that the receipt of the order in the Coordination Unit in the office of Collector of Customs should be taken as receipt of order by the Appellant Collector for the purpose of limitation under Section 129A(3). They have pleaded it was on account of this that the Collector in his appeal has stated that said order was received on 25.3.1985 and the time for filing the appeal expired on 25.6.1985. They have further stated that even in the affidavit filed by the appellant, the averment that matter was referred to the Group for examining the matter for filing the appeal was not correct inasmuch as this issue had already been examined in the Customs House earlier and the Collector had even filed appeal in a similar matter earlier. They have further pleaded that misplacement of papers or negligence is not sufficient cause as held by the Tribunal in their judgment : 1987 (29) ELT 300 (Tribunal) Collector of Customs, Bombay v. M/s. Parker Corporation and that this cannot be taken as constituting sufficient cause for condonation of the delay. The relevant extract of the judgment cited by them is reproduced below : "Condonation of delay in filing of appeal can be granted only when sufficient cause has been made out by the appellant. Nature of governmental functioning does not constitute sufficient cause for condonation of delay (ratio of High Court judgment" delay due to inter-departmental correspondence or consultation or office procedure, was held as not constituting cause for condonation of delay. 'If the court were to accept the mere procedure of working of government offices as sufficient cause for delay in filing of the appeal then the delay would have to be condoned in almost every case and the period of limitation prescribed for filing of the appeal would for the state government become a misnomer." 4. The learned SDR adopted the reasoning given by the Collector in his application and the affidavit filed and cited the judgment of Hon'ble Supreme Court in the case of Collector, Acquisition Anantnag and Anr.

v. MST. Katiji and Ors. : 1987 (28) ELT 185 (SC) and of West Regional Bench of Tribunal in the case, of Principal Collector of Customs, Bombay v. Thermax Private Limited, Pune : 1987 (27) ELT 81 (Tribunal) and stated that delay in filing the appeal should be condoned.

5. We observe that in the appeal by the Collector, the date of receipt of the order has been shown as 25.3.1985 and the reasons given for delay in filing the appeal in the application for condonation of delay filed along with the appeal, as paucity of staff and failure of photo-copying equipment in the office. It was only later that a legal plea was taken that the Collector had not received the copy of the Appellate Order, not having been served on him, and that there was no delay in filing the appeal. It is seen from the date chart filed that the file had been sent to the concerned Unit for scrutiny and study of Appellate Order and it was after a lapse of about two months the same was received from this Unit and Collector passed necessary orders for filing the appeal on 24.6.1985.

6. The respondents cited the order of this Tribunal in which plea taken by the Appellant Collector that the copy of the order had not been received by him was taken note of by the Bench and this plea was rejected. As in that case the Appellate Order had been received by the Assistant Collector, Coordination Unit, here also we find from the endorsement on the impugned order that a copy of this order had been endorsed to the Assistant Collector, Tariff Coordination Unit, New Customs House, Bombay. Obviously, this endorsement by the Appellate authorities and transmission of copy of the order to the Assistant Collector T.C.U. has been done in pursuance to the general instructions issued by the Collector and which have been referred to in the order of the Tribunal No. 108-111/ ' 86-C supra. Strangely, in the affidavit filed no mention has been made of the instructions having been issued by the Collector and the purpose for which these were issued and the learned SDR for the Department has also not chosen to address any arguments in this regard despite having been faced with findings of the Tribunal in Order No. 108-111/86-C as cited by the respondents. Merely a technical stand has been taken that the order had not been endorsed to the Collector and, therefore, it was not received by him and as such time may be taken to run for limitation purposes from 24.6.1985 when the matter came to

Collector's notice.

7. We observe that the date of receipt of the impugned order by the Assistant Collector, T.C.U. designated to receive the said order has been held in the order of the Tribunal cited as the date for the purpose of limitation for filing the appeal. Following the ratio of this decision we hold that in this case time for filing the appeal has to be reckoned with reference to the date of the receipt of the order as set out by the Appellant Collector in his Memorandum of Appeal at Serial No. 3 of the CA-3 Form i.e., 25.3.1985. In view of the instruction issued by the Collector, it is very clear that when the appeal was filed, the Collector was clear in his mind that the order had been served on him by virtue of the fact that it had been received by the Assistant Collector, TCU on 25.3.1985. We observe that the reason given by Collector for delay in filing the appeal is because of paucity of staff and absence of photocopying machine. No facts have been placed before us as to whether there was a sudden shortage of staff in the office and which documents were required to be photo-copied and why could not this be arranged to be done with the resources available with the Customs House. As it is we observe in the Appeal Memo filed there is not a single document which has been photo-copied and which required to be photo-copied. We find that the date of receipt of the Appellate Order by the adjudicating authority in the affidavit filed has been shown as 11.4.1985 and the date of receipt of order in CA-3 Form has been shown as 25.3.1985. In the later affidavit filed there is no mention of 25.3.1985 and the date chart has been prepared starting with the date of receipt of the impugned order by the adjudicating authority as 11.4.1985 ending with 10.7.1985 the date by which the appeal to the Tribunal was ready for filing. Further, we find from the date chart produced that the concerned Group took about two months for scrutiny and study of the order and put up the papers for Collector's orders when, as pointed out by the respondents, there was no need to obtain Group's view inasmuch as on the issue involved an appeal had been filed by the Collector before the Tribunal in a similar case. There is no challenge from the revenue to this averment of the respondents The Collector has chosen to remain silent as to what happened to the order which was stated to have been received on 25.3.1985 as set out in the appeal memorandum. Disposal action taken on the order copy received on 25.3.1985 is relevant in the context of the filing of the appeal. Least

we can say is that an attempt has been made to hold back information. From the above, we are constrained to observe that the Department has not come out clean before us with their reasons for delay in filing the appeal and they have been prevaricating in their pleas for condonation of delay. The learned departmental representative cited judgment of Hon'ble Supreme Court in the case of Collector, Land Acquisition Anantnag and Anr. v. MST Katiji and Ors. : 1987 (28) ELT 185 (S.C.). The Hon'ble Supreme Court have laid down broad guidelines to be followed by the lower courts in the matter of condonation of delay. Further the Hon'ble Court after laying down these principles, have observed as under : "Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay" We observe with respect that broad guidelines given have to be applied to the facts of each case. We observe that for condoning any delay in filing the appeal a cause must be first shown to exist before it can be considered sufficient for the purpose of condoning the delay. From the information furnished before us and the pleas on record we are constrained to observe that no basis has been laid that there was any cause as pleaded for condonation of the delay. All that can be said is that there has been inept handling of the matter in the Collector's office and an attempt has been made to explain the delay on non-existent reasons. In the present case, we observe the appellants have not substantiated the reasons given for the condonation of delay.

We, therefore, hold that the delay in the present case was more on account of lack of diligence on the part of the 'departmental authorities and in the absence of any valid reasons, we reject their application for condonation of delay. Inasmuch as the delay has not been condoned, the appeal is also dismissed as not maintainable.

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