Vikrant Tyres Limited Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jun-29-1983

Reported in : (1983)LC2105Tri(Chennai)

Judge : C Pillai, S Kalyanam

Appellant : Vikrant Tyres Limited

Respondent : Collector of Central Excise

Judgement :

1. Appeal under Section 35B of the Central Excises and Salt Act, 1944 praying that in the circumstances stated therein, the Tribunal will be pleased to set aside the order of the Appellate Collector of Central Excise dated 29-7-82 in C. No. V/68/148/82 and the appellant be permitted to avail of set off duty in respect of Notification No.201/79 as amended in respect of engineering goods and countervailing duty.

2. This appeal coming up for orders upon perusing the records and upon hearing the arguments of Shri B.S. Kesava Iyengar, Advocate for the appellant and upon hearing the arguments of Shri S.K Choudhury, Senior Departmental Representative for the respondent, the Tribunal makes the following ; 3. This is an appeal against the order of the Appellate Collector of Central Excise referred to above dismissing the apppeal of the appellant as barred by limitation under Section 35 of the Central Excises and Salt Act, 1944. The order of the Assistant Collector dated 30-1-82 in C. No. V/68/30/317/81 MP HI was received by the

appellant on 8.2.82 and the appeal as against the same, though dated 5-5-82 was received at the office of the Appellate Collector only on 12-5-82, after expiry of a period of three months prescribed under Section 35 of the Act and consequently, the Appellate Collector dismissed the appeal of the appellant as time barred, against which the appellant has come by way of appeal before us.

4. The learned Counsel appearing on behalf of the appellant submitted that the appeal to the Appellate Collector was posted on the 7th May, 1982 under registered post bearing No. 4511 and in the normal course, it should have reached the Appellate Collector's office at Madras without delay in which case it would have been well within the period of limitation. The delay caused by the Postal authorities in not duly transmitting the appeal of the appellant should not be taken into consideration in computing the period of limitation for preferring the appeal and if the postal delay is excluded, according to the learned Counsel for the appellant, the appeal would be well within the prescribed time limit under Section 35 of the Act.

5. The fact that the appeal of the appellant reached the office of the Appellate Collector at Madras after the period of limitation prescribed under Section 35 of the Act does not admit of any controversy and is indeed admitted by the appellant. Therefore, the only question that arises for consideration in this appeal is whether the alleged postal delay could be excluded in computing the period of limitation prescribed under Section 35 of the Act and the date on which the appeal of the appellant was sent by registered post viz., 7-5-82 or the next working day could by fiction be deemed to be that date on which the appellant had 'appealed' within the meaning of Section 35(1) of the Act.

6. The learned Counsel for the appellant in support of his contention' relied upon a single Bench ruling of the Gujarat High Court in Narandas Vallabhram Parmar and Anr. v. The Union of India and Ors. repotted in 1978, ELT J. 695(Guj), wherein it has been held that an appeal under Section 35 shall be deemed to have been filed on the date the same was sent by registered post and not on the date the appeal was received by the Collector. The learned Departmental Representative drew our attention to a judgment of the Calcutta High Court in Titaghur Paper Mills

Company Ltd. and Anr. v. Union of India and Ors. reported in 1981 ELT J. 27 (Cal) : 1980 Cen-Cus 436D, wherein the case law bearing on the issue has been cited and considered in extenso. As it has been held by the Calcutta High Court, the usual mode of filing an appeal is to present the petition or memorandum of appeal to the appellate authority or a person employed by it and if any period of limitation is prescribed for filing an appeal, the appeal must be presented within the prescribed time and in this view, it was held by the Calcutta High Court that the dates on which appeals were posted by petitioners therein could not be considered as the dates of 'filing of appeals' within the meaning of Section 35 of the Central Excise Act, 1944. A full Bench of the Orissa High Court in Govinda Chowdhury v.Commissioner of Income Tax-40 ITR 93, has held, in considering the scope of the provisions of Rule 7() of Income-tax Appellate Tribunal Rules, that there was no room for any liberal construction and the applications sent by post within time but received by the Tribunal after the expiry of 60 days were time barred. Similar view has also been taken by a Division Bench of the Mysore High Court in Shanta Bal Devarae v. Commissioner of Income Tax 46 ITR 272, agreeing with the ratio in the judgment of the Full Bench of the Orissa High Court referred to supra and also following the view of the Allahabad High Court in Aligarh District Wholesale Cloth Dealers' Syndicate v.Commissioner of Income Tax, U.P. 40 ITR 481.

7. The ruling of the Gujarat High Court relied upon by the learned Counsel for the appellant (1978 ELT J 695-Narandas Vallabhram Parmar A another v. The Union of India and Ors.) is clearly distinguishable because in that case it was found as a fact that the appeal was invited by post and therefore, the post office being nominated or recognised as agent of the authorities and the appeal having been sent within time by post, the authorities wet held patently wrong in holding that the appeal was time barred.

8. The learned Departmental Representative also drew our attention to a Division Bench ruling of the Gujarat High Court in A. Raman and Co. v.Union of India and Ors. reported in ELT 592 (Guj) wherein, it has repelled the contention of the writ petitioner that the post office must beheld to be an agent of the Appellate Collector as there is no implied or express prohibition of law either under the Act or under

the rules thereunder. It is a settled proposition of law that under the general law the postal authorities are not considered as agents of the addressee unless there is an agreement or a representation constituting the postal authorities as agents of the addressees. As a matter of fact, in a Division Bench ruling Report in AIR 1952, Nagpur, it has been held that "where a litigant has chosen the post office as the medium through which to transact his business with the court, he must take the consequence of undue delay." There are number of enactments such as Bombay Industrial Relations Act, 1947, Tamil Nadu Cultivating Tenants Protection Act (Act 25 of 1955), Tamil Nadu Payment of Fair Rent Act (Act 24 of 1956), Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 (Act 10 of 69), Tamil Nadu Occupation of Kudieruppu Conferment of Ownership Act, 1971 (Act 40 of 1971), Madras Land Reforms Act, etc. etc., wherein an express provision is made either in the Act or in the rules permitting appeals to be filed or seat to the concerned appellate authorities by registered post. When there is no such express provision in the Central Excises and Salt Act, 1944 or the rules thereunder permitting or enabling a person to file or prefer an appeal to the appellate authority by registered post, one cannot prefer or send an appeal by registered post and plead that the delay caused by the postal authorities should be excluded in computing the period of limitation prescribed under Section 35 of the Act. In other words, in the instant case, the appellant having chosen the post office, on his own volition, as the medium to transmit his appeal to the appellate authority, cannot, by such unilateral act make or constitute the postal authorities as agents of the appellate authorities.

9. It was contended by the learned Counsel for the appellant that the prevalent practice has been to send appeals by registered-post and what is not prohibited under law should be deemed 'permitted' by law and in this view, the appellant should not be deprived of his right of appeal for the delay occasioned by the postal authorities. We are unalbe to countenance this contention which we reject as not legally tenable and as explained above, (unless either by express provision or by necessary implication a statute recognises or constitutes the post office as an agent of the court or the appellate authority, the mere fact that an appeal was sent by registered post within the time prescribed by law but reached the authorities concerned out of time cannot be construed to be an appeal filed within the

prescribed time limit. For the above reasons, we affirm the order of the Appellate Collector and dismiss the appeal.