

Re-rolling Mills Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-11-1990

Reported in : (1990)(29)ECC237

Appellant : Re-rolling Mills

Respondent : Collector of Central Excise

Judgement :

1. When this appeal was heard, Mr. Mookherjee, the learned counsel for M/s. Re-Rolling Mills, the appellants, said that their appeal was rejected by the Collector (Appeals), Calcutta without giving them a hearing. Had they been given a hearing, they would have explained that they had posted their appeal 5 or 6 days before the last date for filing the appeal. Mr. Mookherjee was then asked whether he made any application for condonation of delay. He replied that he could not imagine that a letter addressed 5 or 6 days before the last date would take so long to reach the Collector (Appeals)'s office. He had no answer to a question as to why the appeal could not be posted 15 or 20 days or even a month before the last date.

2. It is clear that the appellants filed their appeal in the last few remaining days of the time limit allowed by law for filing an appeal.

In doing so, they took a risk and failed to take sufficient care to protect their own interest. They should have known that there are many imponderables between the posting of a letter and its arrival at the destination. When the Collector received the

appeal one day late, he was perfectly justified in rejecting it as time-barred. It is not an explanation to say that the appeal was posted before the expiry of the time limit. Regardless of when the appeal was posted, the appeal must be received in the time given by law. The learned SDR was quite right when he said that the appeal was time-barred and there was no cause for condonation. He quoted in support the decision of the Calcutta High Court in 1981 ELT 27.

3. The learned counsel for M/s. Re-Rolling Mills prayed for remand of the case to the Collector (Appeals) so that he can explain the matter to him and apply for condonation of delay. I do not think this would be appropriate in this case. For one thing, I am not satisfied with the party's performance nor can one assume that condonation of the delay by the Collector (Appeals) can be had or should be had for the asking. The matter should have been presented before him at the appropriate time by an alert appellant alive to his interests; an appellant who allows nothing to the detriment of his case; an appellant who demonstrates that he did everything possible in his power to safeguard his appeal. I cannot see that this is such an appellant nor can I say that the Collector (Appeals) should be put in a position where a condonation of delay application will be presented to him so that, after having rejected the appeal once for delay, he would have to condone the delay and hear the case on merits.

4. I accordingly reject this appeal, because the appeal before the Collector (Appeals) was time-barred.

5. I regret, I am unable to agree with the decision of my Ld. Brother, H.R. Syiem, Member (T) in this case. From the facts set out by him, it is seen that the appeal has been sent by post to the Collector (Appeals) on 30-10-1982. The appeal should have reached his Office by 5-11-1982 but was received by the Collector (Appeals) on 6-12-1982. The appeal was, therefore, dismissed on the ground that there was a delay of one day. The appellants have stated, in the grounds of appeal before the Tribunal that from Hirakud to Calcutta normally, REGISTERED article should not take more than three days and, therefore, it was not within the scope for any reasonable person to apprehend that it might reach Calcutta after six days from the date of actual despatch from Hirakud Post Office. The

department do not dispute the fact that the appeal should have been filed on 5-11-1982 and that the Registered Post reached the Collector (Appeals) on 6-11-1982. In an identical situation, the Tribunal considered the effect of postal delays in 1986 (8) E.C.R. 707 = 1986 (26) E.L.T. 405 (Tri.) (C.C.E., Bhubaneswar v.M/s. Sree Durga Glass Ltd.). This order has been pronounced by the President on the differing views on condonation by two Members of the Tribunal. In Paragraph 32, it is observed as follows :- "In these circumstances the question whether the appeals in these cases were posted sufficiently in time, so that the appellant could reasonably have expected that they would reach the Tribunal within the period of limitation, has to be decided on the basis of common sense and everyday experience. Fortunately, this is a matter where even the ordinary layman can claim some experience." Following the decision in Ram Lal v. Rewa Coal Fields - A.I.R. 1962 (S.C.) 361 it is observed that the words "sufficient cause" ought to receive liberal construction so as to advance substantial justice when no negligence, nor inaction, nor want of bona fides is imputable to the appellants. There was a delay of two days in that case and having regard to the despatch of the 'registered post' five days prior to the expiry of the limitation period, the Tribunal held that there was sufficient cause to condone the delay. The ratio of that citation would apply to the present facts and I am of the view that it is a fit case in which the delay should have been condoned. I, therefore, hold that the appeal should be allowed, and remanded to the Collector (Appeals) for consideration of the merits.

6. The point of difference between the two learned Members who heard the appeal is as follows :- "Whether there is sufficient cause to condone the delay of one day in the filing of the appeal before the Collector (Appeals), Calcutta." 7. The case was fixed, in the first instance, for hearing on 17-4-1990.

In response to the notice of hearing, the appellants responded by a letter dated 5-4-1990 praying that the matter may be decided on its own merit and stating that the appellants were not in a position to attend the hearing either in person or through authorised representative.

However, Shri N. Mookherjee, Advocate (who had represented the appellants before the Bench which originally heard the appeal) responded to the notice of

hearing by a letter dated 29th March, 1990 seeking adjournment of the hearing to a later date. The hearing was accordingly adjourned to 23-4-1990 and later to today (3-5-1990).

Telegraphic intimations were sent to the appellants and postal intimations were sent to the Counsel. However, when the matter was taken up for hearing today, the appellants were not represented in the Court. Accordingly, I have perused the record and heard Shri M.S.Arora, JDR, for the respondent-Collector.

8. Shri Arora, D.R., submitted that for the reasons set out in Member Shri Syiem's order there was no cause for condoning the delay in filing of the appeal. He also submitted that the Collector has no suo motu power to condone the delay in the absence of any application therefor.

In support of his submission, he drew my attention to the decision of the West Regional Bench of this Tribunal in National Transport Co. v. Collector of Customs, Bombay -1986 (26) ELT 981. In this order the Learned Single Member has observed that there was no request for condonation of delay and that, in the circumstance, it could not be said that the order passed by the Collector (Appeals) holding the appeal as time-barred was erroneous. Shri Arora also submitted that in view of the Delhi High Court judgment in the case of Paras Laminates Pvt. Ltd. v. Cegat - 1990 (45) ELT 521, the present Bench cannot differ from the decision rendered by a co-ordinate Bench of the Tribunal.

9. I have carefully considered the submissions and perused the record.

I would first deal with the second submission of Shri Arora. As already noted, the point on which the two Members differed is a specific one, namely, whether there is sufficient cause to condone the delay of one day in the filing of the appeal. It is well settled that the jurisdiction of the Third Member is limited to the point of difference.

The Members have not posed the question whether, in the absence of an application for condonation of delay, the Collector had suo motu power to either call for an application or to condone the delay. That is not the point for me to

consider in the present instance.

10. On the specific point to be considered, I am of the opinion that, for the reasons set out by Shri M. Santhanam, Member (Judicial) in his separate order, the delay of one day should have been condoned in view of the fact that the appeal had been posted by registered post on 30-10-1982, that is, well before the expiry of the period of limitation on 5-11-1982. Postal vagaries being beyond one's control, and the appellants having shown due diligence by posting the appeal sufficiently in advance, the delay by one day should have been condoned. In taking this view I am fortified by the following observations in para 33 of the order in Collector of Central Excise, Bhubaneswar v. Shree Durga Glass (P) Ltd. "It appears to me that when it comes to sending an article from a State capital to the Union capital, an official might be justified in assuming that 5 days was a sufficient time. No doubt if he were to exercise abundant or super-abundant caution, he might proceed on the basis that postal transit could take 7 days, or 10 days, or even more. But there is a point beyond which abundant caution may amount to cynicism. It is not physically impossible, if the post office functions with reasonable efficiency, for a registered article handed in at Bhubaneswar to be delivered at New Delhi within 3 or 4 days. I do not think a citizen should be required to assume that a Government Department like the Post Office will not function with reasonable efficiency, and should be required as a matter of course to make allowance for inordinate delays on its part." 11. The observations made by the Supreme Court in its judgment in the case of Collector, Land Acquisition Anantnag and Anr. v. Mst. Katiji and Ors. - 1987 (28) ELT 185 (S.C.) are also very apposite. The Supreme Court has, inter alia, observed that ordinarily a litigant does not stand to benefit by lodging an appeal late. The doctrine of "every day's delay" must be applied in a rational, common sense, pragmatic manner. Judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

12. Having regard to the principles laid down by the Supreme Court, I am of the opinion that there was sufficient cause to condone the delay of one day in filing of the appeal.

13. This matter will now go back to Special Bench 'B' for final order of disposal of the appeal.

14. In view of the majority decision, the delay in the filing of the appeal is condoned.

1. Instead of Misc. Order No. 31/90 dated 11-5-1990 please read as Final Order No. 82/90-B1 dated 11-5-1990.

2. Please also add the following lines after the last line in para 14 at page 9.

"Matter is remanded to the Collector (Appeals) Central Excise, Calcutta for decision on merits." Sd/- Sd/- (HARISH CHANDER) (V. RAJAMANICKAM)

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