

Collector of Customs Vs. Nirulas Corner House (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-15-1990

Reported in : (1991)LC270Tri(Delhi)

Appellant : Collector of Customs

Respondent : Nirulas Corner House (P) Ltd.

Judgement :

1. Collector of Customs (Madras) has filed an appeal being aggrieved from the order passed by the Collector of Customs (Appeals), Madras.

The said appeal was received in the Registry on the 3rd day of December, 1984 and in Column No. 3, the date of communication has been mentioned as 4th August, 1984. An application for Condonation of Delay was also filed along with the appeal Memo. Shri M.K. Sohal, Ld. J.D.R.who has appeared on behalf of the appellant pleaded that the appeal could not be filed within the stipulated period as the matter was under examination of the Revenue authorities and it took some time and as such the appeal could not be filed within the stipulated period. As soon as the appellant felt that the appeal has to be filed, the appeal was filed. He has pleaded for condonation of delay.

2. Shri A,S. Sundar Rajan, Ld. Consultant who has appeared on behalf of the Respondent opposed the condonation of delay and pleaded that there was negligence on the part of the appellant and in support of his argument he has referred to a judgment of the Supreme Court in the case of Ram Bhawan Singh &

Ors. v. Jagdish & Ors., reported in 'Judgement Today' 1990 (3) SC 704, where there was a delay of 1198 days and there was no material on record indicating due diligence in working out the remedies and there was no proper affidavit either of the appellant or of the Counsel. He has pleaded for the rejection of the condonation of delay.

3. We have heard both the sides and have gone through the facts and circumstances of the case. For the proper appreciation of the correct position, the application for condonation of delay is reproduced as below :- "The Collector of Customs, (Appeals) passed the order in appeal S/49-773/83 CL on 25-6-84 and it was communicated to Customs House on 4-8-84.

The time-limit to file appeal thus expired on 3-11-84. The appeal could not be filed in time for the following reasons :- (i) The matter was examined in detail to determine as to what exactly is a domestic electrical appliance and whether the machine in question be considered a domestic electrical appliance. This took time and the appeal could not be filed within the time-limit.

The matter was therefore submitted to Collector for his Order with all the details of study. He ordered for filing the appeal finally on 13-11-84.

It is therefore prayed that CEGAT may please condone the delay in filing the appeal and admit the same." A simple perusal of the same shows that the delay occurred due to interdepartmental communication. Hon'ble Supreme Court in the case of UOI v. Tata Yodogawa Ltd. reported in 1988 (38) ELT 739 (SC) has held that "Appeal by Department - Condonation of delay - Delay due to inter-departmental correspondence and processing not sufficient case for condonation of delay - Section 35-C of the Central Excises and Salt Act, 1944." Shri Sundar Rajan, Ld. Consultant cited the latest judgment of the Supreme Court in the case of Ram Bhawan Singh & Ors. v. Jagdish & Ors., reported in 'Judgement Today', 1990 (3) SC 704, Para No. 7 of the said judgment is reproduced below:- "The first question that we have to decide is that of limitation.

The delay of 1198 days according to the appellants had occurred unwillingly and the appellants had been prosecuting with due diligence the earlier proceedings

before the appellate and the revisional authorities and on the basis of the advice given by their counsel. There is no proper affidavit of either the appellants or the counsel in support of the application for condonation of delay.

There is also no other material to indicate that the appellants had exercised due diligence in working out their remedies and sought proper advice in the matter. When the party had no right of appeal, the proceedings instituted before the High Court challenging the judgment in the Writ Petition cannot be considered to be one in good faith. The subsequent proceedings are also not legal or valid. When the decision of the High Court in the Writ Petition was on quashing the orders of the appellate and the revisional authorities, the party could not proceed on the basis that the matter was restored to the lower authorities for fresh decision. We are therefore not satisfied that there is any merit in the ground urged by the appellants for getting over the bar of limitation. The appeals are liable to be dismissed as time-barred." In the matter before us, the Assistant Collector who has been authorised by the Collector to file an appeal and also application for condonation of delay has not filed any affidavit along with the application for condonation of delay also. Accordingly, we are of the view that there was negligence on the part of the appellant in the filing of the appeal and the appellant was not prevented by sufficient cause in the late filing of the appeal. The appellants' request for condonation of delay is rejected.

4. Since we have rejected the application for condonation of delay, the appeal is also dismissed being hit by limitation and we are not going into the merits of the same.

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