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

Collector of Central Excise Vs. Modi Steels

Collector of Central Excise Vs. Modi Steels

SooperKanoon Citation : sooperkanoon.com/6870

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-06-1992

Reported in : (1992)(42)LC302Tri(Delhi)

Judge : H Chander, Vice, K T P.K.

Appellant : Collector of Central Excise

Respondent : Modi Steels

Judgement :

1. Collector of Central Excise, Meerut has filed an appeal being aggrieved from the order passed by the Collector of Central Excise (Appeals), New Delhi. The said appeal was received in the Registry on 4th March, 1985. In column No. 3 the date of communication has been mentioned as 21st September, 1984. Thus there is a delay of 73 days.

Shri S.K. Sharma, the learned JDR has appeared on behalf of the appellant. He has reiterated the contentions made in the application for condonation of delay. He pleaded that there was misplacement of file and the file was located with much difficulty and on the location of the file, the appeal was filed. He pleaded that the appellant was prevented by sufficient cause in the late filing of the appeal and the delay may be condoned.

2. Shri Lachhman Dev, the learned consultant who has appeared on behalf of the respondent, opposed the condonation of delay. He pleaded that the application for

condonation of delay is not supported with an affidavit and misplacement of papers is not a sufficient cause. In support of his argument, he cited a decision in the case of Hindustan Fertiliser Corporation Ltd. v. Collector of Customs, Calcutta (Cegat Calcutta). He also cited another decision of the Tribunal in the case of Collector of Customs v. Ajanta Tubes Ltd. and the an appeal was filed before the Supreme Court in the case of Ajanta Tubes Ltd. vide page A104 reported in 1990 (47) ELT. He pleaded for the rejection of the application for condonation of delay.

3. We have heard both the sides and have gone through the facts and circumstances of the case. The facts are not disputed. There is a delay of 73 days. Hon'ble Supreme Court in the case of Union of India v. Tata Yodogawa Ltd. reported in 1988 (38) ELT 739 (SC) : 1988 (19) ECR 569 (SC) : ECR C 1269 SC had held that inter departmental communication is not a sufficient cause. The Tribunal had the occasion to deal with the situation as to misplacement of papers in the case of Shipping Corporation of India Ltd. v. Collector of Customs, Calcutta . Paras No. 4 and 5 from the said judgment arc reported below: 4. After hearing both the sides and going through the records of the case, I would like to observe that the appellant has not taken the slightest care even in complying with the requirements of the Registry. Even for the condonation of delay the conduct of the applicant is very important. The question has to be approached from the point of view of the applicant's conduct. It was so observed by the Hon'ble Madras High Court in the case of Kayambu v. Court of Wards reported in AIR 1942 Madras 170 (extract taken from the Limitation Act by B.B. Mitra, page 58, XVIII Edn.) (not cited by the parties). There is delay in the filing of the aforesaid revision applications. As per provisions of Sub-section (2) of Section 131 of the old Customs Act, 1962, the revision application could be filed within six months from the date of communication of the order upon the applicant. Relevant extract from old Section 131 ibid before its repeal is reproduced as under: 131. Revision by Central Government. - (1) The Central Government may, on the application of any person aggrieved by- (b) any order passed under Section 130 otherwise than on the application of any aggrieved person, or (c) any order passed on the application of any aggrieved person under Section 130 where the order is of the nature referred to in either of the proviso to Sub-section (1) of that section, (2) An application under Sub-section (1) shall be made within six months from the date of the

communication to the applicant of the order against which the application is being made: Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of six months, allow it to be presented within a further period of six months.

After the repeal of Section 131 the discretion as to the condonation of delay which could have been exercised by the Central Government, now vests with this Court as per provisions of Sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

A simple perusal of the appellant's prayer for condonation of delay in these four appeals, clearly shows that the only ground taken by the appellant is that of misplacing of papers and the appellant has not filed any separate applications for condonation of delay duly supported with Affidavits explaining the circumstances which resulted in the delay in filing of revision applications (now appeals). It is a settled law that where the appellant acts without due care and attention there is no sufficient cause for extension of time. This was observed by the Hon'ble Rajasthan High Court in the case of State of Rajasthan v. Ramnath (not cited by the parties). The Hon'ble High Court had followed an earlier judgment of the Calcutta High Court reported in AIR 1933 Calcutta 462 in the case of Khajeh Habibullah v. Abdul Karim. During the course of arguments, Shri Chatterjee had pleaded that it is a Government of India Undertaking and there is a big channel for the movement of papers from one quarter to another quarter and it takes quite a long time in reaching the right section and as such a special treatment should be given to the appellant. The appellant's request on this count cannot be accepted as the Government of India Undertaking cannot be placed on a superior footing. The Hon'ble Supreme Court had held in the case of State of West Bengal v. Howrah Municipality 'sufficient cause' cannot be considered too liberally merely because the party in default is the Government. It is no doubt true that whether it is a Government or a private party, the provisions of law applicable arc the same, unless the Statute itself makes any distinction. But it cannot also be gain-said that similar consideration that will be shown by courts to a private party when he claims the protection under Section 5 of the Limitation Act, should also be available to the

State. In para 30 of the said judgment, the Hon'ble Court had further observed that the 'sufficient cause' should receive a liberal construction so as to advance substantial justice when any negligence or inaction or want of bona fide is imputable to a party. Similar is the position in the case of a corporate body which is not entitled to a greater indulgence under Section 5 of the Limitation Act than a private individual. It was held in the case of District Board, Sargoda v. Shamsadin reported in 123 Indian Cases 1983 (extract taken from page 54 of the Limitation Act by B.B. Mitra, XVIII (Edition) (not cited by the parties).

5. After the aforesaid discussions and in view of the legal position, I do not feel it to be a fit case where this Court should exercise its discretion in condoning the delay in filing of revision applications under Sub-section (5) of Section 129A of the Customs Act, 1962. I hold that the appellant was not prevented by sufficient cause in the late filing of the revision application. Accordingly, all the four appeals are dismissed being hit by limitation. Since the appeals arc dismissed on the point of limitation, I am not going into the merits of the appeal.Ramlal and Ors. v. Rewa Coalfields had held that after the expiry of limitation, the appellant has to explain each and every day's delay as the respondent acquires substantial rights. Hon'ble Supreme Court in the case of Bhawan Singh and Ors. v. Jagdish Singh and Ors. reported in 1990 (3) Judgment Today 704 had affirmed the earlier view in the case of Ramlal and Ors. v. Rewa Coalfields In the matter of appeal against the order of Collector (Appeals), New Delhi No. 599/CE/MRT/84 dated 31.8.1984 The said order as cited above was received in the office of the Collector of Central Excise, Meerut on 21.9.1984. The appeal period expired on 20.12.1984. The appeal against the order could not be filed within the specified period of 3 months as the relevant file was misplaced : Correspondence for the location of the file was made with Collector (Appeals) but it was anyhow got located with much difficulty and on its location the appeal has been filed.

Accordingly it is requested that appeal may be allowed to be filed in terms of Section 35B(5) of Central Excises and Salt Act, 1944.

A simple perusal of the same shows that the only ground is misplacement of papers. This Tribunal in the case of Collector of Customs v. Ajanta Tubes Ltd. vide order No. 25189-B2 dated 22nd February, 1989 1989 (23) ECR 234 (Cegat SB-B2) had held that misplacement of papers is not a sufficient cause and this view of the Tribunal has been affirmed by the Supreme Court in the case of Collector of Customs v. Ajanta Tubes Ltd. Civil Appeal No.4. In view of the above discussion, we are of the view that there is negligence on the part of the appellants. The appellant was not prevented by sufficient cause in the late filing of the appeal. The application for condonation of delay is rejected.

5. 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.

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