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Commissioner of Central Excise Vs. Customs, Excise and Gold (Control) Appellate Tribunal, (Now Customs, Excise and Service Tax Appellate Tribunal)

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Court : Delhi

Decided On : May-05-2005

Reported in : 120(2005)DLT549; 2008(228)GLT338

Judge : Swatanter Kumar and; S. Ravindra Bhat, JJ.

Acts : Central Excise Act - Sections 11A(2), 35H and 35H(1); Central Excise Rules - Rule 57AH and 57U; Limitation Act - Sections 5; Code of Civil Procedure (CPC) - Sections 151

Appeal No. : CEAC No. 19/2005

Appellant : Commissioner of Central Excise

Respondent : Customs, Excise and Gold (Control) Appellate Tribunal, (Now Customs, Excise and Service Tax Appellat

Advocate for Def. : Nemo

Advocate for Pet/Ap. : A.K. Bhardwaj, Adv

Disposition : Application dismissed

Judgement :

Swatanter Kumar, J.

1. The Commissioner of Central Excise, Chennai issued a show cause notice to M/s Sharda Motors Industries Ltd. on 24.5.2001 requiring the said company to submit a reply to the said notice as based on the intelligence it was noticed that company has availed irregular Modvat Credit (now Cenvat Credit) on the capital goods belonging to and received by M/s Hyundai Motors India Ltd. under the lease and license agreement. The company was further required to submit a reply to the show cause notice within 30 days in regard to the 4 points raised in the show cause notice. The show cause notice was issued without prejudice to the right of the Department to take such other proceedings which are permissible under the provisions of the Central Excise Act and the rules framed there under. The company submitted its reply to the show cause notice and after considering the contentions raised by the respective parties the Commissioner of Central Excise confirmed the payment of Rs. 21,99,959/- under Section 11A(2) of the Act read with Rule 57U/ 57AH of the Rules. He further imposed a penalty of Rs. 21,99,959/- the amount equal to that of the duty and further imposed a penalty of Rs. 1 lac under Rule 57U/57AH. The order dated 29.8.2001 was challenged by the company before the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi and vide their order dated 6.3.2002 set aside the order of the Commissioner and allowed consequential reliefs. It was held by the Tribunal that the Appellant had complied with all the formalities for the purposes of taking Modvat Credit on the goods received by them from M/s Hyundai Motors Ltd.

2. Aggrieved from this order the Department has filed the present appeal in the year 2005. The Appellants have filed CM No. 3809/2005 under Section 5 of the Limitation Act praying for condensation of 14 days delay in filing the appeal before this Court and CM No. 3810 under Section 151 of the Code of Civil Procedure for condoning the delay of 836 days in refiling the appeal before this Court.

3. We heard the learned counsel for the Appellant on these two applications and thus would proceed to decide these applications at the first instance.

4. The case pleaded by the Applicant in the application for condensation of delay in filing the appeal it is stated that the Appellate Tribunal had passed the order on 6.3.2002, copy of which was received by the Appellant on 11.4.2002 and the Appellant had filed a reference on 25.10.2002. According to the Applicant, there is 14 days of delay in filing the present appeal being CEAC No. 19/2005. Thus, it is prayed that the delay be condoned. We find that the averments in the application are vague and do not correctly state the facts which appear from the record before us. We may also notice here that during hearing of the case we had even called report on the case from the Registry of the Court which again shows that the facts have not been correctly mentioned in the application.

5. From the copy of the order of the Appellate Tribunal placed on record before us it is clear that the order was passed on 6.3.2002 copy thereof was ready on 26.3.2002 and there is no document on record to show that as to how the Appellant has received the copy on 11.4.2002. Even if, it is presumed in favor of the Appellant that copy was received on 11.4.2002, then they had allegedly filed the Reference in the Registry of this Court on 25.10.2002 apparently, beyond the period of limitation. As per report of the Registry under Seriall No. 160 on 25.10.2002 a civil writ was filed under No. 28905/2002 titled as Commissioner of Income Tax v. Customs, Excise & Gold (Control) Appellate Tribunal. There appears to be some variation even in the title of the case. In any case no appeal was filed in this Court under Section 35H of the Act on 25.10.2002. That civil writ or reference application was filed under Section 35H(1) of the Act was filed on 25.10.2002 which was returned with the objection that the petition should be correctly classified. This was never done and the said petition was never refiled in the Registry of this Court. There is no reason whatsoever a sufficient cause has been stated in the application as to why the appeal was not filed within the period of limitation that is 180 days from the date the order was served upon the Appellant and why even the reference application was never refiled in the Registry of the Court after removing the objections. In fact, on 1.3.2005 for the first time, a fresh/new appeal is filed under filing No. 6364. In this way there is delay in filing the appeal right from 10.10.2002 to 1.3.2005. The Appellant has hardly given any satisfactory Explanationn for this inordinate delay. There is not even an iota of averment as to why the so-called reference application which itself was not

maintainable in law, was never refiled even till date. This only shows complete callous and irresponsible attitude on the part of the Respondents in dealing with the legal matters. Wherever the Statute provides a limitation it must be construed and applied strictly as a definite right accrues to the other party on expiry of such period before the other party can be divested of such benefit there should be definite and proper Explanationn on record before the Court to condone the delay in filing an appeal. condensation of delay can not be claimed as a matter of right and such discretion should not be exercised by the Court or the authorities in a mechanical manner. Legislative intent behind prescribing the period of limitation normally is to create a bar in institution of the proceedings upon expiry of the period except for the exceptions specifically provided in that provision itself. Delay cannot be condoned as a matter of right or on the mere asking of the party. It is expected of the Court to exercise such discretion as per settled guidelines and is inevitable for a party to show a sufficient cause while requesting the Court to exercise such discretion in favor of the Applicant. In the case of Shanti Devi v. State of Haryana and Ors. : (1999)5SCC703 , the Supreme Court held that delay should be explained properly and sufficient cause should be shown before the Court can condone the delay. Further, in the case of K. Ayya Thayalnayagiammal v. T.V. Thomas : JT2000(7)SC384 , the Supreme Court further held that the order of the Supreme Court in condoning the delay of 1510 days in filing the appeal was not proper exercise of jurisdiction as no proper Explanationn has been rendered by the applicant. Like the present case where applicant had pleaded by making vague averments that 'papers were received late and the delay of 215 days should be condoned', the Court rejected this contention and held that the delay was barred by time thus liable to be dismissed on the ground of limitation. Reference can be made to the case of State of Haryana v. Shri Mangat 2002 (1) PLR 280. Provisions of Section 35H of the Act provided for a specific period of limitation for filing an appeal. Firstly, even the reference had not been filed within the period of limitation and secondly even that reference application was not accompanied by an application under Section 5 of the Act. Thus, as already noticed this memorandum of reference application was never filed on the counter of the Registry of the Court. The defect even if was curable, was permitted to become a illegality and in fact a bar to the very entertainment of the appeal after a lapse of

more than 3 years. We may refer to the judgment of the Court in the case of Punjab State etc. v. Onkar Nath and Anr. 1998 (4) Ind. C C 303 where the Court has held as under :-

9. In the case of State of Haryana v. Chandra Mani : 2002(143)ELT249(SC) , the Hon'ble Supreme Court has observed that the Court may add some-what liberal approach in accepting such Explanationn in the case of State. It is clear that the Hon'ble Apex Court did not intend nor has in fact held that State need not to explain the delay and any appeal preferred by the State would be entertained on merits, even if it is hopelessly barred by time.

10. At this stage, it may be more appropriate to make a reference to more recent judgment of the Hon'ble Supreme Court rendered in the case of P.K. Ramachandran v. State of Kerala and Anr. J.T. 1997(8) S.C. 189 : 1998 (4) Ind C C 445, where the Hon'ble Supreme Court while setting aside the judgment of the High Court of Kerala, who had condoned the delay of 565 days without reasonable or satisfactory reason, observed as under :-

'Law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, thereforee, succeeds and the impugned order is set aside. Consequently, the application for condensation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs.' xxx xxx xxx

The High Court does not appear to have examined the reply filed by the appellant as reference to the same is conspicuous by it absence from the order. We are not satisfied that in the facts and circumstances of this case, any Explanationn, much less a reasonable or satisfactory one had been offered by the respondent State for condensation of the inordinate delay of 565 days.

11. Following the judgment of the Hon'ble Supreme Court in the case of P.K. Ramachandran (supra), this Court in the case of Gram Panchayat, Malot v. Prem

Singh, C.M. No. 4751 and 4852-C of 1997 and R.S.A. No. 2873 of 1997, 1998(3) Indian Civil Cases 95, declined to condone the delay in filing the appeal and dismissed the application preferred by the appellant under section 5 of the Limitation Act in that case. Furthermore, the Court in the case of Mauria Udyog and Ors. v. Shubh Karan and Anr., R.S.A. No. 2340 of 1996, decided on 10.10.1996 held as under :-'The term sufficient cause must receive liberal meaning and has to be incorporated so as to introduce the concept of reasonableness as it is understood in its general connotation. Certainly Limitation Act is a substantive law and its provisions have to be adhered to in a manner that once a valuable right accrues in favor of one party, as a result of unexplained sufficient or reasonable cause and directly as a result of negligence, default or inaction of the other party, such a right cannot be taken away lightly and in a routine manner.'

6. We have already noticed that in the application for condensation of delay the Applicant has failed to give any plausible reasons. Similar is the position in regard to application for condensation of delay in refiling the appeal. The said application, in fact, is misconceived. The reference application was never refiled by the Applicant while the appeal in hand was filed in the Registry of this Court for the first time on 1.10.2005. Thus, this application would hardly be even maintainable. The only reason stated in the application for condensation of delay is that there was communication gap between the counsel and the Department as a result of which necessary steps could not be taken by the Department within the period of limitation. May be the Respondents are not strictly required to explain each day of delay but they are duty bound to at least render some plausible Explanationn for the substantial period for which condensation is prayed. In both these applications there is no averment as to what happened after 25.10.2002 till 1.3.2005.

7. We cannot help but to observe that conduct of the Department is not satisfactory in the present case and it also does not meet the minimum standard of administrative function in the Government department particularly when it relates to recovery of revenue. There is no cause shown much less a sufficient cause for condoning the delay. The application is vague and no satisfactory Explanationn has been rendered in the application which could persuade the Court to condone such a long delay in filing the appeal.

8. We dismiss these applications and consequently, the appeal does not survive for consideration being hopelessly barred by time.

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