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

**Collr. of C. Ex. Vs. Pioma Indus. and Imperial Soda**

**Collr. of C. Ex. Vs. Pioma Indus. and Imperial Soda**

**SooperKanoon Citation** : sooperkanoon.com/7436

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-31-1994

**Reported in** : (1994)LC177Tri(Delhi)

**Appellant** : Collr. of C. Ex.

**Respondent** : Pioma Indus. and Imperial Soda

**Advocate for Def.** : Shri. S.B. Vakil

**Judgement** :

1. Being aggrieved with the impugned Order-in-Appeal passed by the Collector of Central Excise (Appeals), Bombay the Revenue has filed the present appeal.

2. During the pendency of the appeal an objection was raised by the Respondents that the appeal is time-barred. It was contended on behalf of the respondents that against the Order-in-Orginal No. V-1B(2-1) 83, dated 15-9-1986 passed by the Assistant Collector of Central Excise an appeal was filed by the respondents before the Collector of Central Excise (Appeals), Bombay. The Collector (Appeals) set aside the order of the Assistant Collector on the ground that it was passed without jurisdiction. However, he also observed that this Order of him would not in any way affect the jurisdiction of Collector of Central Excise from taking appropriate steps open to him under the statute. This order was passed on 14-4-1987 and not on 15-4-1987 as stated in the Memo of Appeal before us. Against this order of the Collector of Central Excise (Appeals) the Revenue has filed the present appeal which was received in the Registry on 19-6-1989. In column No. 3

of Form EA 3 (Appeal Memo.) the date of communication of the said order has been stated to be 10-4-1989. If the period of limitation of three months as prescribed under Section 35B(3) of the Central Excises & Salt Act, 1944 is counted from the date of communication that is to say 10-4-1989 as stated by the appellants, the appeal would be within time. But the contention of the respondents was that the present appeal is hopelessly time-barred if the period of limitation of three months as prescribed under Sub-section (3) of Section 35B of the Act is counted from the date of the impugned order-in-appeal. To meet this preliminary objection the Revenue has filed the captioned application for condonation of delay.

3. Arguing on the application it was contended by the Ld. SDR, Smt.

J.M.S. Sundaram, that the Assistant Collector of Central Excise, Division-V, Ahmedabad requested the respondent vide his letter dated 29-12-1988 to supply the paper book and Memo. of Appeal preferred before the Collector of Central Excise (Appeals), Bombay against the order-in-original dated 15-9-1986 with a further request to inform him about the latest position of the appeal. In reply the counsel for the respondents Shri S.B. Vakil vide his reply dated 2-1-1989 intimated the Assistant Collector that the said appeal filed by the respondent has already been disposed by the Collector (Appeals) vide his order dated 14-4-1987. On receipt of this reply the Collector of Central Excise came to know about the passing of the impugned order. Accordingly, a request was made to the said Advocate Shri S.B. Vakil for supplying the copy of the impugned order, who in turn forwarded the copy of the same under his covering letter dated 20-2-1989. On receipt of this copy immediate telex dated 24-2-1989 was sent to the Collector of Central Excise (Appeals), Bombay who has passed the impugned order requesting him to send the certified copy of the order-in-appeal. Acting on this telex request the concerned Collector (Appeals) forwarded the certified copy of the impugned order under his covering letter dated 4-4-1989. It was received in the office of the Collector on 10-4-1989 and thereafter the appeal was preferred on 14-6-1989 under Registered A.D. post before this Tribunal. It was stressed that since as per the requirement of the CEGAT (Procedure) Rules, 1982 certified copy of the impugned order has to accompany the appeal, the period of limitation of three months would be counted from the receipt of the certified copy of the impugned

order-in-appeal that is to say 14-6-1989.To support her contention she cited the case of Collector of Central Excise, Indore v. R.R. Tea Company, 1987 (31) E.L.T. 728 wherein while interpreting the word "communication" occurring in Section 35B(3) it was held that period of limitation of three months would be counted from the date of the receipt of the order by the Collector. Case of Kohinoor Cane Crusher v.Additional Secretary, Govt. of India, 1991 (52) E.L.T. 360 was also cited wherein it was held that since it was not established by evidence that the adjudication order was served on the assessee therein, the order of the Central Government dismissing the appeal as time-barred was not justified. In reply the ld. counsel for the respondents Shri D.Dave, submitted that the non-communication of the Appellate Collector's order to Executive Collector is not a sufficient cause and cited the case of Collector of Customs v. Union Carbide (I) Ltd., Calcutta, 1989 (40) E.L.T. 459. Case of Collector of Customs v. C.V. Damodharan, 1993 (65) E.L.T. 453 was also cited by him wherein delay in filing the appeal by the Revenue was not condoned observing that there was no evidence to show that the Additional Collector did not receive the copy of the impugned order. In a nutshell his submission was that in the present case no evidence has been led by the appellants to show that the copy of the impugned order-in-appeal was either not forwarded to the Executive Collector or that it was not received and mere ipse dixit in the application or in the affidavit sworn in by the Supdt. cannot be treated as a conclusive evidence in the absence of any documentary evidence on the record.

4. Considered. The contention of the Ld. SDR that the date of communication of the impugned order-in-appeal in the instant case be taken the date on which the certified copy of the Order-in-Appeal was sent to the applicant by the Collector (Appeals) that is to say 4-4-1989 cannot be accepted at the threshold. The appellant Collector has not led any evidence to establish that the copy of the impugned order was not sent by the Collector (Appeals) to the Executive Collector. That apart, it is not known as to why the Collector of Central Excise, appellants herein, did not make any effort to contact the Office of the Collector (Appeals) either to find out as to whether the copy of the impugned order was despatched to his office or to obtain the certified copy of the same even though admittedly he was informed by Shri S.B. Vakil, Advocate under his covering letter dated 2-1-1989. It is not explained as to why the appellants herein requested Shri S.B. Vakil,

counsel for the respondents to provide a copy of the impugned order instead of obtaining the same from the Collector (Appeals) even after knowing the fact that the impugned order was passed by the Collector (Appeals) on 2-1-1989. Under these circumstances we do not find any sufficient cause for delay in preferring the present appeal and the present case is a patent case of sleeping over his right to file the present appeal by the Collector of Central Excise and that may be the reason as to why the present appellants that is to say Collector of Central Excise has not filed his own affidavit but thought it proper to direct the lowest officer in the hierarchy, i.e., Superintendent to file the present application under his signature for condonation of delay and the affidavit in support of it. Before we part one more fact is also required to be stated that is to say in the instant case the Collector authorised the Additional Collector to file the present appeal exercising his power under Section 35B(2) of the Act and further that he again authorised the Assistant Collector to move an application for early hearing (Misc. Application No. E/1049/92-D) but when the question of the present application arose it is the Superintendent who has filed the present application and his supporting affidavit.

5. In the result the captioned application for condonation of delay is rejected and as a consequence thereof the appeal is also dismissed as time-barred.

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