

Collector of Central Excise Vs. Maxxon India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-08-1994

Reported in : (1995)(76)ELT369TriDel

Appellant : Collector of Central Excise

Respondent : Maxxon India Ltd.

Judgement :

1. Collector of Central Excise, Chandigarh has filed this application for condonation of delay in respect of the Reference Application filed by him which in turn related to Order No. A/368 & 369/94-NRB dated 18-4-1994 passed by this Tribunal. In the application for condonation of delay, it has been stated that the Tribunal's order in question was received on 17-5-1994 in the collectorate and the Reference Application was filed on 12-8-1994. There has been a delay of 26 days in filing the application which had occurred only while examining the Tribunal's order. The delay was neither wilful nor intentional and the department did not stand to gain anything by delaying the filing of the Reference Application. It has been urged that this delay which was beyond their control may be condoned. A date chart has been enclosed with the application indicating the action taken on various dates from the date of receipt of the Tribunal's order till the date of preparing the draft Reference Application and putting it up.

2. Shri Sanjeev Sachdeva, learned Senior Departmental Representative argued the matter on behalf of the applicant Collector. He referred to the date chart showing the action taken and pleaded that as the delay was due to the time taken

for proper examination of the matter at different levels of officers in the collectorate and was unintentional, the same may be condoned and the Reference Application taken up for hearing.

3. The plea raised by Shri Sachdeva was strongly opposed by Shri A.N.Haksar, learned Senior Advocate who represented the respondents, M/s.

Maxxon India Limited. He pointed out that the date chart submitted with the condonation application merely shows that file was being marked to the different officers. Some of the offices and the officers concerned were in the same place and the delay is not due to any factors beyond the control of the applicant collectorate as falsely claimed. Routine handling of the file does not justify the time stated to have been taken. No special reasons like taking any expert advice or obtaining the approval of the Ministry is involved. No valid explanation has been offered. If limitation is allowed to be crossed, the other party gets a vested right on the basis of the order passed and that right cannot be denied to it unless the delay is satisfactorily explained. Shri Haksar referred to the decision of the Honourable Supreme Court in Union of India v. Tata Yodogawa Ltd. -1988 (38) E.L.T. 739 (SC) where the delay in filing the S.L.P. was not condoned by them and pleaded that the delay should not be condoned.

4. Considered the arguments. The delay is beyond 16-7-1994 when the normal time limit of 60 days was over. From the time chart submitted along with the application, it is seen that against the date 24-5-1994 the entry reads "the dealing Assistant examined the order and put up for order". The next date in the statement is 1-7-1994 more than 37 days later. Though this gap is within the permissible time of 60 days, it is obvious that the ultimate delay beyond 60 days was to a large extent caused by this delay. The delay could have been averted, even if action was taken properly thereafter. Even after the Collector had agreed with the proposal for filing reference and gave direction for putting up draft on 18-7-1994 which incidentally was after the expiry of the permissible period of 60 days, the matter had not been handled with any sense of urgency in a time-bound matter. The draft reference application is stated to have been put up by the dealing Assistant to the Superintendent concerned on 27-7-1994. The next movement is

dated 9-8-1994 by way of marking the file to the Assistant Collector. Such routine delay at every stage does not merit condonation. The Reference Application relates to an order of the Tribunal which had been passed on an appeal filed by the department itself. The matter had thus already been handled in the collectorate while preferring the appeal.

If the department felt that the Tribunal's order required to be referred to the High Court for their opinion on any question arising from the said order, the processing of the matter should not have taken such a long time, particularly as the Reference Application including the brief facts of the case as prepared by the Collector hardly covered two pages. The questions themselves were only as follows:- "1. That if the regenerated granules were cleared on nil rate of duty than the MODVAT Credit cannot be allowed on the waste which was recycled.

2. Whether the recyclable inputs can be treated as waste within the definition of Rule 57-D of the Central Excise Rules, 1944." The delay is seen to be due to negligence in handling the matter and not giving the matter necessary importance. We are not satisfied with the explanation given that the delay was due to reasons beyond the control of the Collector and his office. We, therefore, dismiss the application for condonation. The Reference Application itself is, therefore, dismissed as time-barred.

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