

Collector of C. Excise Vs. Procter and Gamble India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-24-1995

Reported in : (1995)LC229Tri(Delhi)

Appellant : Collector of C. Excise

Respondent : Procter and Gamble India Ltd.

Advocate for Def. : Shri. Arshad Hidayatullah

Judgement :

1. Collector of Central Excise, Hyderabad has filed this application for condonation of delay in filing his appeal against the order-in-appeal No. 44/93(H)C.E., dated 12-3-1993 passed by Collector of Customs & Central Excise (Appeals), Hyderabad. The said order had been received by him on 16-3-1993 and the appeal should have been filed on or before 16-6-1993. The appeal which is dated 28-7-1993 was, however, received on 29-7-1993 by speed post. The delay in the filing of the appeal which is sought to be condoned is thus 43 days. In the appeal itself, in para 7, it was stated as follows :- "There is a delay of 41 days in filing the appeal beyond the statutory period of 3 months for the following reasons :- (i) during the period for appeal, Collector was on long leave and the Collector holding additional charge was also transferred.

(ii) this is a very important issue which has all India ramifications and it must be properly determined and should not be lost on a mere technical ground like late filing of appeal.

(iii) differential practices & treatment will arise if this issue is not resolved." Subsequently, a separate application was filed by the Collector for condonation of delay stating the following reasons :- "During the period for appeal, the concerned Collector Sri Moheb Ali, Collector-II was on leave from 3-5-1993 to 18-6-1993. Sri A.K. Chabra, Collector-I was holding additional charge from 3-5-1993 to 21-5-1993. On transfer of Sri A.K. Chabra, Collector to Madras Sri R.K. Chakrabarti, Collector was holding addl. charge of Collector-II from 21-5-1993 to 31-5-1993 (The impugned order OIA No. 44/93 (H) CE appealed against in this case was passed by Sri R.K. Chakrabarti as Collector (Appeals). However, Sri S.V. Ramakrishnan has reported for duty on 31-5-1993 as Collector-II on his transfer from Bombay Collectorate. Shri S.V. Ramakrishnan, Collector-II was on tour from 1-7-1993 to 11-7-1993.

Secondly, the Principal Collector, Customs and Central Excise, Hyderabad was also holding additional charge/on tour from 3-6-1993 to 9-6-1993, 14-6-1993 to 4-7-1993 and 7-7-1993 to 12-7-1993.

2. This is very important issue with all India ramifications. There have been a number of judgments holding that the products of this type [having] Ayur-vedic ingredients should or should not be classified as Ayurvedic medicines. In some of the judgments, it has been highlighted that to be categorised as Ayurvedic medicines, the products should be manufactured exclusively in accordance with the authoritative texts mentioned in the First Schedule to the Drugs and Cosmetics Act, 1940. Moreover, the products 'Vicks Veporub' and 'Vicks Inhaler' also contain synthetic ingredients which are not mentioned in the authoritative texts. As the matter is complex and would require consideration of all these aspects, it is prayed that the Hon'ble Tribunal be pleased to condone the delay of 41 days and hear the matter. Substantial revenue is also affected in this case and different types of assessments are made in various Collectorates and the Hon'ble Tribunal would set the controversy at rest.

For all these reasons, it is humbly prayed that the Hon'ble Tribunal may please condone the delay of 41 days in filing of the appeal." By the subsequent letter dated 28-11-1994 addressed to Smt. Vijay Zutshi, Director of Publications, who is

handling the appeal matter before the Tribunal, the Collector had instructed her that a prayer may be made to the Tribunal in case the condonation of delay application is not allowed alternatively the appeal filed by the department may be treated as their cross objection with reference to the appeal filed by M/s. Procter & Gamble India Limited. It was stated by the Collector that the notice of the said appeal of Procter and Gamble was received alongwith the notice of hearing of the connected stay application [which] was received in his office on 4-5-1993.

2. The application for condonation of delay in the filing of appeal was taken up for hearing when the applicant Collector was represented by Smt. Vijay Zutshi, learned Director of Publicity and Public Relations, Customs and Central Excise, New Delhi. She submitted that the plea for condonation of delay should be considered in view of the sufficient cause which had led to the delay in the filing of the appeal by the Collector. Such sufficiency is traceable to the complexity of the problem involved which was not free from doubt and in respect of which there were conflicting decisions from the different Courts and the Tribunal Benches. There was even a Supreme Court judgment as to the decisive factor to determine whether a medicine was exclusively used in the Ayurvedic system which had a bearing on the issue involved in the instant appeal but that was not in the knowledge of the department and was not referred to even in the appeal. This was in *Ishwar Singh Bindra v. State of U.P.* reported in AIR 1968 Supreme Court 1450. The situation was fluid with divergent views on the subject. The fact that the matter was not free from doubt at that time constituted sufficient cause for the delay. In this connection, she referred to the Tribunal decision in *Collector of Central Excise, Baroda v. Gujarat State Fertilisers Corporation Limited* reported in 1987 (31) E.L.T. 224 wherein it had been held by the Tribunal that the expression sufficient cause is sufficiently elastic to enable law being applied in a meaningful manner. It was observed that the system of processing in Government should be borne in mind and that the doctrine of explanation of each day's delay should be applied in a rational common sense and pragmatic manner. Accordingly delay of 27 days, was condoned. The said decision took note of the observations of the Hon'ble Supreme Court in *Collector, Land Acquisition, Anantnag v. Mst. Katiji* reported in 1987 (28) E.L.T. 185 (SC). The same will apply in the present case. The delay was not due to any mala fide factor. The Tribunal had held in *Collector*

of Central Excise, Bhubaneswar v. Shree Durga Glass (P) Limited, Orissa reported in 1986 (26) E.L.T. 405 that sufficient cause is to be construed liberally so as to advance substantial justice when no negligence or want of bonafide was imputable to the appellant. In answer to a query from the Bench as to the reasons for giving the dates when Principal Collector in charge was on tour and what effect it had on the processing of the matter for filing the appeal to the Tribunal, Smt. Zutshi stated that Principal Collector's approval was required for filing such appeals. The attention of Smt. Zutshi was then drawn to the majority decision in the case of Collector of Central Excise v. Speedway Rubber Company reported in 1993 (66) E.L.T. 425 (T) and the Supreme Court decision in Wadhya Mal v. Prem Chand Jain reported in AIR 1982 SC 18 which was referred to and followed by the Tribunal in the aforesaid case whereupon she submitted that the ratio of the said case would apply to the present case. She accordingly pleaded that the delay be condoned and the appeal heard on merits.

3. The arguments were strongly resisted by Shri Arshad Hidayatullah, learned Counsel for the respondents. He contended that the mere fact that the issue was not clear and that there were conflicting decisions as stated by Smt. Zutshi should itself have made the department alert and prompted them to file the appeal to keep the issue alive. Instead, the matter has been apparently handled in a routine way. No explanation has been given in the application for the delay except that the Collector and the Principal Collector were on leave or on tour at different times. Actually, during the period of fifteen days from 16-6-1993, the Collector was available. There is no explanation why the appeal could not be filed during this period which was after the expiry of the normal period. In fact the explanation which has been given contains no details of action taken on the matter to explain the reason for delay. It contains only a list of dates of the Collector's or the Principal Collector's tours. There is no report of the processing of the case and no movement of the papers has been indicated. The Collector who filed the appeal was in office from 31-5-1993 till 1-7-1993 when he went on tour. The Principal Collector was in Headquarters off and on and had been away on tour from 3-6-1993 to 9-6-1993, 14-6-1993 to 4-7-1993 and 7-7-1993 to 12-7-1993. There were days when both these officers were available together in Headquarters.

Though, as cited by the other side, there are decisions condoning the delay on the part of Government in filing appeals etc., such decisions were taken in the facts of such cases. These are not the authority for a general proposition that just because the application for condonation of delay is by the Government, the delay should be condoned. In fact there are decisions to the contrary. Delays by Government have not been condoned in several cases some of which he cited. These are :-Collector of C. Ex., Meerut v. Hindustan Lever Ltd. Collector of Central Excise & Customs v. Papyrus Papers Limited Collector of Central Excise v. Rallis India Limited Collector of Central Excise v. East Coast Paper Products P. Ltd., Calcutta Union of India v. Visveswaraya Iron and Steel Ltd. 6. 1988 (38) E.L.T. 739 (SC) - Union of India v. Tata Yodogawa Limited.

Learned Counsel, Shri Hidayatullah pointed out that the last judgment was delivered by the Supreme Court after the judgment in the Mst.

Katiji case relied upon by Smt. Zutshi, learned representative for the applicant Collector. Their Lordships, while dismissing the application for delay, observed that they were aware of the fact that the Government being impersonal takes longer time than the private bodies or individuals. Even giving that latitude, it was remarked that there must be some way or attempt to explain the cause for such delay. It was noted that there was no whisper to explain what legal problems in filing the special leave petition arose. Shri Hidayatullah, the learned counsel then submitted that delays were condoned in the cases cited by the learned Representative for the department, taking into account the facts of those cases. Thus, in Collector v. Gujarat State Fertiliser case a detailed date chart was furnished explaining the processing of the matter. In the facts of the case, the explanation was found acceptable and the delay was condoned. The delay was of 27 days. In the case of Collector, Bhubaneswar v. Shree Durga Glass P. Limited the delay was of two days. The appeal had actually been despatched by Registered Post five days prior to the expiry of the limitation period.

Again in the case of Collector of Central Excise v. Speedway Rubber Company Wadhya Mal v. Prem Chand Jain - AIR 1982 SC 18 was referred to and followed in the majority decision, the Supreme Court decision rested on the facts

of the case. The Speedway Rubber case related to supplementary appeals being filed subsequent to the filing of a combined appeal which was in time. In the Supreme Court judgment relied upon therein, the award was under challenge by other persons and it had a bearing on the appeal filed by the particular appellant whose appeal was filed beyond time.

It was in these circumstances that the delay was condoned. The case was distinguishable from the present case. He reiterated his plea that the plea for condonation of delay may be dismissed. He opposed the alternative plea that in the event of the delay not being condoned the department's appeal be treated as a cross-objection as he submitted that this is not permissible.

4. Smt. Zutshi, learned Director of Publication gave a brief rejoinder to the reply given by the learned counsel opposing her plea for condonation of delay. She contended that the Hon'ble Supreme Court judgment in the Wadhya Mal case fully supported the department's case.

Here the impugned order-in-appeal challenged by the Collector was already under appeal to the Tribunal by the respondents, M/s. Procter and Gamble. That appeal is pending. During its pendency, the department has filed their appeal. That should be allowed to be heard on merits instead of dismissing it at the threshold stage on the ground of limitation. She concluded her rejoinder with the plea that the delay be condoned. She also reiterated her plea that in the event of the same not being allowed, the department's appeal be treated as their cross objection in relation to the appeal of the present respondents.

5. We have carefully examined the submissions made before us and the cases cited. There are a number of decisions for and against condonation of delays in filing of appeals by the assesseees as well as by the department. In respect of the latter class of appeals themselves there are decisions of both types. While the fact that Government functioning being impersonal and involving several officials could lead to delays has been taken note of in these decisions, it has also been made clear that delays on the part of the Government cannot be automatically condoned and sufficiency of cause leading to such delay has to be established in each case. Delays have not been condoned even after taking note of the possibility of delays

in Government functioning. Two such decisions at the level of the Supreme Court were cited by Shri Hidayatullah before us. These were in the cases where the respondents were Tata Yodogawa Ltd. and Visvesivaraya Iron & Steel Limited. In the present case, as pointed out by him, there is no explanation available as to the delay in the processing of the matter.

Thus the application dated 29-8-1994 filed by the Collector long after the filing of the appeal itself only gives the names of the Collectors who had been in charge of the Collectorate from May 1993 onwards. After stating that Shri S.V. Ramakrishnan took charge as Collector on 31-5-1993, the next information given is that he was on tour from 1-7-1993 to 11-7-1993. He was the officer who filed the instant appeal.

Thus it was he who was in charge when the time limit for filing the appeal expired. There is no indication of the processing of the papers around the crucial time when the period of limitation expired and thereafter. There is no information reported as to what was done after 16-6-1993 when the time limit expired. Though Government functioning involves several levels of officers which may take time, nothing has been explained in this case that it was because of such processing that the matter got delayed. Touring of Senior Officers like Collectors and Principal Collectors is inevitable in the very nature of their duties.

It is neither possible nor necessary that such officers should remain stay put in Headquarters in order that important time-bound matters should be got attended to and disposed of.

There should obviously be some system or drill that such important matters are brought to the notice of a Collector taking up the post on transfer or of his ascertaining the same himself. During the period he was in Headquarters from 31-5-1993 to 1-7-1993 which also covered the pre-limitation period upto 15-6-1993, his office should have brought the matter to his notice and obtained his decision. If he or the Principal Collector was not available in the Headquarters, special efforts should have been taken to ensure that this time bound matter was completed and not left to lie over. In the absence of any information reported in the application as to what was the processing done in the matter about which there is no whisper

therein, we cannot accept the plea based on a statement that a Collector took charge on a particular day and after about a month proceeded on tour for eleven days which tour was after limitation had expired. There is no indication that it was the very complexity of the matter that led to the delay because of factors like correspondence and consultation with experts etc. We agree with the learned counsel for the respondents that in a matter where admittedly the department was agitating the issue on which there were conflicting decisions, it was all the more necessary that the appeal should have been filed promptly as the department was already seized of the matter. As regards the argument of the learned Departmental Representative, Smt. Zutshi that an important matter should not be shut out at the threshold stage on the technical ground of time bar and that the appeal should be heard on merits as the issue involved is very important and the reliance placed by her on the observations of the Hon'ble Supreme Court in the Mst. Khatiji case, we do not think that simply because the issue raised is important, the time bar factor should take a back seat. There is no separate law of limitation for such cases. No doubt, if, because of the importance of the matter, certain detailed examination, consultation or approval of a time consuming nature had to be gone through or any unforeseen difficulty had cropped up, a case could be made out from the sufficient ground angle but neither in the appeal wherein itself a plea for condonation of delay was made nor in the subsequent application for condonation has there been any mention made of such reasons for delay.

Only the dates of Collector and Principal Collector going on tour have been furnished. This plea is, therefore, not acceptable.

6. Smt. Zutshi had referred to the Hon'ble Supreme Court judgment in Wadhya Mal v. Prem Chand Jain and pointed out that in that case the Hon'ble Supreme Court had held that delay on the part of the appellant Shri Wadhya Mal was condonable as there were two appeals against the same award challenged by him pending. Similar approach would be justified in the present case. Here also the order-in-appeal which was challenged by the Collector was already under challenge by the respondents also and during the pendency of that appeal by the respondents, this appeal has been filed by the Collector. Delay in filing it deserves to be condoned on the analogy of the Hon'ble Supreme Court's aforesaid decision,

it was urged. We are not inclined to agree.

The Supreme Court decision was taken, guided by the special facts of that case, as observed by them. The appellant Shri Wadhya Mal was the owner of the truck in an accident in which Respondent No. 1 was injured. That respondent and Respondent No. 2 who was the insurer had preferred separate appeals before the Allahabad High Court against the Award of the Additional Motor Accidents Claims Tribunal. The delay which was not condoned by the Honourable High Court was condoned by the Honourable Supreme Court on appeal by him. It was held that as the award was under challenge in two appeals, it was just and proper that the appeal of Wadhya Mal may also be entertained and disposed of on merits alongwith the other two appeals. This decision was taken as apparently it was felt that the decision on the appeals filed by the respondents had a bearing on the appeal filed by Shri Wadhya Mal. That is not the case here. The appeal by the present respondents and the appellant Collector are in respect of different products. The decision on one is independent of that on the other. In the circumstances, there is no special reason to link the disposal of one appeal with the other.

It is not a universal proposition that where an appeal is filed by one or more appellants and that appeal is pending the respondent or respondents are entitled to condonation of delay if they file their own appeals belatedly. Under the relevant statute applicable here, the respondents do get the opportunity to file cross-objection within specified time limit. The same would be defeated if appeals are permitted to be filed beyond the permissible period. The Supreme Court decision has been distinguished by us. Accordingly, we refuse to condone the delay.

7. There was an alternative plea that in the event of the delay not being condoned, this appeal should be treated as Collector's cross-objection in relation to the appeal of M/s. Procter & Gamble. We are not deciding this issue at this stage. This should be linked with the said appeal and when that is taken up, the request for treating the Collector's appeal as cross-objection would be taken up for disposal and if the plea is accepted, both matters would be heard together.

8. I have gone through the order prepared by my Id. brother Shri K.Sankararaman, but I could not persuade myself regretably to agree with his findings. In this COD application besides a prayer for condonation of delay in filing the appeal, the appellant is alternatively also seeking this appeal to be treated as a cross-objection to the Appeal No. E. 865/93-C, filed by the appellant. I am inclined to agree with both the prayers of the appellants for the following reasons.

9. The impugned appeal was passed on 12-3-1993, which has been served on the appellant on 16-3-1993, the last date for filing the appeal was 16-6-1993. But the last date for filing the cross appeal will be forty five days from the date of service (i.e. 45 days from 4-5-1993) on the appellant of the memorandum of appeal filed by the respondent (E.865/93-C). The cross appeal should have been filed within 29-6-1993.

This appeal has been filed on 29-7-1993. Hence, there is a 30 days delay in filing the cross appeal also. It has been explained that the Principal Collector, who was holding the additional charge had been on tour between 3-6-1993 to 9-6-1993 and 14-6-1993 to 4-7-1993. Shri Ramakrishnan was on tour from 1-7-1993 to 11-7-1993 and that the Principal Collector was again on tour from 7-7-1993 to 12-7-1993 and immediately thereafter, the appeal was prepared and it was verified and signed on behalf of the appellant on 28-7-1993. These facts of the Principal Collector and Shri S.V. Ramakrishnan, the Collector, being on leave are not disputed. In a circumstance like this, when the concerned officers [who] have to sign the authorisation, after examining the records, are not available and being on tour, it cannot be said that there are laches and negligence on their part. The appellants have exercised due diligence and care and have not acted in a manner calling for an inference of negligence. Where, the officers of the department concerned are entrusted with onerous tasks and have to control and supervise various responsibilities and in terms of such public duties, they are required to go on tour in public interest and on resumption of their duties have immediately signed the appeal memo, then in that circumstance, it cannot be said that the appellants, have not exercised due care. The appellants are not required to explain the reasons for not filing within the stipulated time, yet the appellants have assigned good reasons and show cause for not filing the appeal also during that

period, i.e. the Collector had proceeded on leave and the Additional Collector was also transferred and the new Collector Shri S.V.Ramakrishnan took charge on 31-5-1993.

As Hon'ble Supreme Court has held that Courts should not take a pedantic view of the matter and sufficient latitude has to be given, where the explanation given is satisfactory so as to advance substantial justice [1987 (28) E.L.T. 185 (SC) : 1986 (26) E.L.T. 405].

I am also of the view that the ruling of the Tribunal rendered in the case of C.C.E. v. Speedway Rubber Co. [1993 (66) E.L.T. 425] based on the Hon'ble Supreme Court ruling rendered in the case of Wadhya Mal v.Prem Chand Jain (AIR 1982 SC 18) is fully applicable to the facts and circumstances of this case. Where a substantial issue in appeal arising from the impugned order is pending before the Tribunal in respondent's appeal in E. 865/93-C, this appeal of the appellant is also required to be taken up by condoning the delay. Further, the prayer for treating this appeal as cross appeal is also fully justified. The appellant has right to file cross appeal within 45 days of receipt of the appeal of the respondent in E. 865/93-C. However, there is also a delay of 30 days in filing cross appeal. If delay is viewed from this angle i.e.

this appeal on being treated as cross appeal, even then there would be delay of 30 days. The delay of this 30 has also been sufficiently explained and cause shown. There are no laches or negligence, to warrant a strict view for dismissal at the threshold stage itself. In that view of the matter, I condone the delay and direct the registry to link this appeal with E. 865/93-C, to be taken up together for disposal, as appeal and cross appeal, for disposal as per law.

10. I have carefully gone through the separate orders proposed by learned Member (Technical) and learned Member (Judicial), and I agree with the order proposed by Member (Judicial) Shri S.L. Peeran. I may add that the respondents M/s. Procter & Gamble India Ltd. had also filed an appeal bearing No. E/865/93/C against the same impugned order in appeal, and the principles on which the classification of the different products as Ayurvedic or otherwise was decided, were under challenge and the Tribunal is required to take a view in the

matter. Collector, Land Acquisition v. Mst. Katiji - [1987 (28) E.L.T. 185 (SC)], the Hon'ble Supreme Court had propounded a justice oriented approach in the matter of condonation of delay. They observed that the power to condone the delay is "in order to enable the Courts to do substantial justice to parties by disposing of matters on merits" and that "the collective cause of the community does not deserve a litigant no grata status". In the case of Bhag Singh v. Major Daljit Singh [1987 (32) E.L.T. 258], the Hon'ble Supreme Court had observed as under : "We have considered the entire facts and circumstances of the case.

The law is now well settled by several decisions which have been cited before us (AIR 1962 Punjab 446) and (AIR 1956 Allahabad 677) as well as of this Court reported in AIR 1964 SC 215 that the Court while considering an application under Section 5 of the Limitation Act will consider the facts and circumstances not for taking too strict and pendant stand which will cause injustice but to consider it from the point of taking a view which will advance the cause of justice". In the case of Union of India v. N. Das R. Israni (1993 AIR SCW 2573), the Hon'ble Supreme Court had ruled that the judicial power and discretion in the matter of condonation of delay should be exercised to advance substantial justice. After discussing their earlier decisions on the subject, the Hon'ble Supreme Court held "pragmatic approach may be called in aid to advance cause of public justice in particular when public exchequer is involved." 12. It is also seen that the Departmental Representative had brought to notice a Supreme Court decision in the case of Ishwar Singh Bindra v. State of Uttar Pradesh - (AIR 1968 SC 1450) which according to her, is relevant for merits of the case. In that decision, which according to her, was not referred to earlier, each individual ingredient of the preparation could not be a decisive factor to determine whether the medicines or the substances are exclusively used or prepared for use in accordance with Ayurvedic or Unani system.

13. The facts as mentioned above by the learned Member (Judicial) in his order show that the application for condonation of delay had not been made in a casual or routine manner, as was the case in Union of India v. Vidharbha Veneer Industries [1994 (69) E.L.T. 3 (SC)]. In the appeal itself, reasons for delay have been mentioned. The grounds had been mentioned in the application filed

separately also for the condonation of delay which in law would constitute sufficient cause to explain the delay in filing the appeal.

14. On consideration of the facts and circumstances of the case, I consider it to be a fit case for condonation of delay and I agree with the learned Member (Judicial) that the delay be condoned and the Registry may be directed to link this appeal No. E/865/93/C to be taken up together for disposal as appeal and cross appeal for disposal as per law.

In view of the majority view, we condone the delay for the filing of the appeal by the department. Registry to link this file with the Appeal No. E/865/93-C filed by the respondents to be heard together.

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