

S. BenjamIn Vs. Commissioner of Central Excise, Chennai

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Jan-30-2012

Judge : The Honourable Dr. Justice Chittaranjan Satapathy, Technical Member & the Honourable Mr Justice D.N. Panda, Judicial Member

Appeal No. : Appeal No.C/COD/22 of 2011, C/S/25 of 2011 & C/25 of 2011

Appellant : S. Benjamin

Respondent : Commissioner of Central Excise, Chennai

Advocate for Pet/Ap. : For the Appearing Parties: S. Venkatachalam, Advocate.
For the Respondent: V.V. Hariharan, JCDR

Judgement :

Per D.N. Panda, J.

1. Appeal in this case was filed before the Tribunal on 12.1.2011. Impugned Order-in-Original was received by the appellant on 20.2.2009 and appeal ought to have been filed by 19.5.2009. Accordingly, appeal preferred is with a delay of 603 days.

2. The appellant moved an application registered as C/COD/22/2011 for condonation of delay of aforesaid length stating that the signatory, Sri S.Benjamin was not in charge of day-to-day activities of the company M/s.Hi Bright Apparels (P) Ltd. He was living in Coimbatore which is 450 kms. from the factory. He used

to visit the factory rarely. After receipt of the SCN, he was informed by one Sri T.Arunachalam that allegations in the SCN were not correct and he would take care of the case before the authority. When result of the adjudication required appeal, he informed Sri Benjamin (appellant) that appeal would be filed by him but that was not done. When Sri Benjamin met Shri Arunachalam during 2nd week of January 2011 and enquired about the status of the case, he came to know that Sri Arunachalam filed appeal for himself and had not filed appeal for the company as well as Sri Benjamin. It is also averred that he was not aware of the procedure of filing appeal. Therefore, the delay of 603 days has occurred.

3. Ld. Counsel appearing on behalf of the appellants submitted that the averments made in the application may be considered and the delay may be condoned.

4. Revenue disagrees to the submissions of the appellant and prays to refuse condonation of delay.

5. Heard both sides and perused the record.

6. We do appreciate that right of appeal for redressal of grievance is a valuable right. But such a right is exercisable within the period prescribed by the statute. Time being essential, prescription of time limit for exercise right of remedy is the necessity of civil society to prevent litigation unended for a long time. Therefore right diminishes with the passage of time and vanishes when law of limitation operates.

7. Law of limitation has prescribed life span for legal remedy. Time of Judicial forums being precious is not expected to be wasted trying the belated prayers since during the afflux of time newer causes sprout up necessitating newer persons to seek legal remedy by approaching courts. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy which is enshrined in the maxim interest reipublicue up sit finis litium (It is for general welfare that a period be put to litigation). Accordingly, unreasonable and unexplained delay renders a remedy fatal.

8. Remedy in this case is found to be barred by limitation by 603 days. The explanation of the appellant does not appeal to common sense when he is Managing Director of the company. It is strange how the appellant as an officer of the company pleads his innocence when he is Managing Director thereof. Negligence is no excuse and not protected by law. A vigilant is only protected by law. Just because the Tribunal believes that ordinarily a litigant does not stand to benefit by lodging a appeal late and refusing to condone delay in filing the appeal can result in meritorious matters being thrown out at the threshold stage, an indolent does not deserve consideration. Abuse of the process of law declared by apex court in the case of Collector Vs Land Acquisition, Anantnag and other Vs MSG Katiji and Others - 1987 (28) ELT 185 (SC) is the tactics adopted by the application for condonation of delay.

9. No one has preemptory right to get the delay condoned on one plea or the other. We are conscious that there cannot be presumption of deliberate delay on account of culpable negligence or malafide. But when the appellant as a Managing Director did not visualize that he may run in risk when SCN resulted in adjudication of demand and penal consequences, he became a silent spectator. Present application is abuse of process of law for no reasonable cause advanced. Condonation of delay of unexplained nature shall be premium to the lapse. There is no sufficient cause to condone the delay of 603 days made in the present case to seek appeal remedy.

10. Just because the Tribunal is vested with the discretion to condone the delay, exercise of such discretion is not meant to grant premium to the default of delay when neither cogent nor believable reason exist. We are conscious that length of delay is immaterial while cause of delay counts following the ratio laid down by the apex court in the case of N.Balakrishnan Vs M.Krishnanamurthy 2008 (228) ELT 162 (SC). When no reasonable cause came forward from the appellant to prove his innocence nor any material facts or surrounding circumstances support his pleading, it cannot be said that delay is inadvertent. Application discloses casual approach with scanty regard to law. In the absence of reasonable cause and insufficiency of cause shown, it is not possible to visualize whether the delay can be said to be excusable from the averments in the application. Therefore, this is

not a case for any indulgence of the court to waste its time for no good cause shown. Accordingly, MA (COD) is rejected. This calls for dismissal of stay petition and appeal. It is ordered accordingly.

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