

Commissioner of Central Excise Vs. Akry Rasayan

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-15-1996

Reported in : (1997)(89)ELT81Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Akry Rasayan

Judgement :

1. These are four Miscellaneous applications filed by the Revenue praying for condonation of the delay in filing the appeals. In these four appeals the respondents are M/s. Akry Rasayan, M/s. Sunrise, M/s.

Sunglow Inds. and M/s. General Mfg. & Trading Corpn. A Notice for today's hearing had been sent to all the respondents. M/s. Sun Glow Inds. are represented by Shri M.B. Deodhar, Consultant and M/s. General Mfg. & Trading Corpn. are represented by Shri Vipin Jain, C.A. There is no response from the two respondents M/s. Akry Rasayan and M/s.

Sunrise. As in all the four Misc. applications, similar delay of 33 days is involved and the same ground had been adduced by the Revenue.

2. For M/s. General Mfg. & Trading Corpn. Shri Vipin Jain [submitted] that the appeal should have been normally filed within the period of three months and there are no adequate grounds for condoning the delay of 33 days in filing the appeal by the Revenue. On behalf of M/s.

General Mfg. & Trading Corpn. Shri Vipin Jain submitted that in the case of Union of India v. Tata Yodogawa Ltd. - 1988 (38) E.L.T. 739 (S.C) the Supreme Court had held that the delay due to inter-departmental correspondence and processing was not sufficient for condonation of delay. He also referred to some Tribunal decisions in this regard.

3. On behalf of Revenue, Departmental representative replied that the delay has been caused by administrative reasons and that those reasons have been mentioned in the application for condonation of delay. He prays for the condonation.

4. We have carefully considered the matter. The matter relates to the interpretation of Exemption Notification relating to small scale exemption. In all the four appeals there is a delay of 33 days. The reasons for the delay have been given as under: (3) The Chief Commissioner and Commissioner were busy in All India Conference of Chief Commissioners and Commissioners.

5. The matter involved in all these four appeals relates to giving the retrospective effect to the amendment made in Notification No. 175/86 by virtue of Notification No. 67/92, dated 22-5-1992. It involves an important question of law relating to the small scale units. The Supreme Court in a number of decisions have observed that while taking a decision on the COD applications a pragmatic approach has to be made and the decision has to be taken for advancing the cause of justice. In the case of B. Singh and Ors v. Major Daljitp Singh - 1987 (32) E.L.T.258 (S.C.) the Supreme Court had observed that the Court should not take too strict pedantic stand which will cause injustice while considering application for condonation of delay. Such application should be considered from the point of view which will advance the cause of justice. The case of G. Ramegowda, Major and Ors v. Spl. Land Acquisition Officer, Bangalore (1988) 2 SCC 142. Cited in Para 9 of the decision in the case of State of Haryana v. Chandra Mani and Ors. - 1996 (64) ECR15 (S.C.) the Supreme Court in Para 9 of that decision had held as under :- " It was held that no general principles saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring

the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation, is no doubt, the same for a private citizen as for Government authorities. Government, like any other litigant must take responsibility for the acts of omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be some-what unrealistic to exclude from the consideration that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have 'a little play at the joints'. Due recognition of these limitations on Government functioning of course, within reasonable limits is necessary if the judicial approach is not to be rendered unrealistic. It would perhaps be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters.

Implicit in the very nature of Governmental functional is procedural delay incidental to the decision- making process. The delay of over one year was accordingly condoned." 6. Taking all the relevant considerations into account in the interest of justice these applications for condonation of delay are allowed.

7. The Id. C.A. for M/s. General Manufacturing & Trading Corporation made an oral request that these matters may be fixed for early hearing.

The Departmental representative has no objection. The matters are listed for hearing on 24th September, 1996.

8. As for the respondents which are not represented the notice of hearing may be sent immediately by the Registry to them. For M/s.

General Manufacturing & Trading Corporation and M/s. Sun Glow Industries no notice is required as the representatives of the respondents are present.

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