

Harsha Tractors Limited

v.

Collector of Customs

(Supreme Court Of India)

HON'BLE JUSTICE SABYASACHI MUKHARJI HON'BLE JUSTICE S.
RANGANATHAN

Civil Appeal No. 2508 (Nm) Of 1988 | 07-12-1988

1. Having considered the order of the Customs Excise and Gold (Control) Appellate Tribunal, we are of the opinion that perhaps there have been certain amount of laches on behalf of the appellant. Taking, however, an overall view and having regard to the possibility of the condition prevailing at that point of time as urged by the counsel for the appellant before the Tribunal, in the interest of justice it will be right and proper to condone the delay in filing the Revision Application and the order of the Tribunal is accordingly set aside. The appeal is allowed. The appeal has to be heard by the Tribunal on the merits as expeditiously as possible.

Copy of CEGAT (Special Bench `C) Order No. 366/88-C, dated 25-4-1988 in Appeal No. CD/SB/T/224/8-C and passed by S/Shri S.D. Jha, Vice-President (J) and P.C. Jain, Member (T) in the matter of Harsha Tractors Ltd. v. Collector of Customs

[Order per : S.D. Jha, Vice-President (J)]. - This order disposes of a preliminary objection by the respondent that the revision application now transferred to the Tribunal to be disposed of as an appeal presented before it is barred by limitation and the application of the appellants for condonation of delay. The revision application now appeal was first fixed for hearing on 26-10-1987. Preliminary objection as to limitation was then raised by Shri Sundar Rajan, JDR for the respondent. Shri Rangaswamy, learned Advocate for the appellants while maintaining that the appeal is not barred by limitation without prejudice to this contention agreed to file an application for condonation of delay - that is how the present application for condonation of delay of 104 days in presenting the revision application now appeal has been filed.

2. At the hearing Shri M.A. Rangaswamy, learned Advocate for the appellants submitted that the order of the Appellate Collector of Customs, Calcutta, dated 18-7-1981 was received by the appellants on 14-8-1981. However, in terms of the order the appellants paid duty as levied on 4-12-1981 and filed a claim for refund of the same on 21-5-1982. He also submitted that as assessment dated 21-11-1981 on the ex-bond bill of entry as witnessed from the bond executed before clearance was itself provisional re-assessment would not be barred by limitation until final assessment is made. He also submitted that when the amount of duty is not quantified in the assessment order, the time for filing an appeal commences running only after an order quantifying the duty demand is served on the assessee. For this argument he relied on Government of India decision In Re : Goodgood, Manufacturers - 1980 E.L.T. 786 (GOI) and Sri Venkateswara Cooperative Sugar Factory Ltd. v. Collector of Central Excise, Hyderabad - 1985 (20) E.L.T. 321 (Tribunal). Reference was also made to 1978 E.L.T. (J 416) Assistant Collector of Central Excise, Calcutta v. National Tobacco Co. of India Ltd. as to meaning of the words levy and collection and levy and assessment - difference between them.

3. On going through the two decisions it is seen that the decisions relate to adjudication orders and not orders passed in appeal. Clearly the ratio of these two decisions would not apply to the present case because the appellants even before duty was quantified by the Assistant Collector of Customs by his order dated 17-6-1980 despatched on 23-9-1980 has presented appeal to the Appellate Collector of Customs, Calcutta. After the Appellate Collector has passed orders not in adjudication but in appeal, the appellants cannot urge that time for filing revision or appeal should run not from the date of communication of the order which the law provides but from the date of service of demand quantifying the duty which the two decisions in the peculiar facts and circumstances of the cases lay down. We reject this argument.

4. Taking up next the condonation of delay application paras 5 to 10 of the same are material. The application sets out that at the time the impugned order was received by the appellants on 14-8-1981 the excise and customs work were being looked after by one Shri C.D. Sharma, a retired Inspector of the Central Excise Department. His services were terminated on 4-12-1981 whereafter he absented himself and handed over charge on 22-12-1981 to Shri D.P. Garg,

Manager Purchase of the appellants. In January 1982 Shri D.P. Garg went abroad and returned after nearly 2/3 months and the new incumbent took time to familiarise himself with accumulated work. On return of Shri D.P. Garg it was revealed that no steps in the case were taken. That C.D. Sharma, retired Inspector had taken the view that as duty had been paid on 4-12-1981 the remedy was to apply for refund within 6 months from the date of payment of the duty under the relevant rule and in fact an application for refund was filed on 21-5-1982. The appellants thereafter contacted a counsel who advised them to follow the remedy of refund as well as revision application before the Government of India without wasting any time. In these circumstances 104 days delay between 14-2-1982 the date when time for filing revision application under Section 131 of Customs Act, 1962 expired to 28-5-1982 the date of filing revision application to Government of India. The application then goes on to say that appellants were under the bona fide belief that due and proper steps were being taken in the case and sufficient cause for condonation of delay is made out. Shri Rangaswamy also stated that under Section 131 of the Customs Act, 1962 Government of India had power to condone delay up to six months in filing revision application whereas the revision application in the present case had been filed in 104 days after expiry of limitation i.e., within the time limits which could be extended by the Government on sufficient cause being shown - a liberal view should therefore be taken. The request was, however, strongly opposed by Shri L.C. Chakraborty, JDR.

5. In our view, sufficient cause for condoning delay in presenting revision application, now appeal, has not been made out. From the application for condonation of delay supported by an affidavit it would appear that the appellants filed refund application due to mistaken advice of C.D. Sharma, retired Inspector, Central Excise and later they consulted a Counsel. Before mistaken legal advice can be considered ground for condoning the delay in presenting appeal or revision application it should be shown that the parties sought advice of competent counsel and such advice was given exercising reasonable skill and care after proper examination and due care and caution. In the instant case all these aspects are lacking. This apart Shri C.D. Sharma left appellants employment in December 1981 and then the matter was entrusted to Shri D.P. Garg. Shri. D.P. Garg does not appear to have taken any action and is said to have left for a foreign country. The particulars given are extremely vague and general and on that basis sufficient cause for condoning inordinate delay of 104 days, to our mind, is not made out.

6. We therefore reject the application. As a consequence application for admission of additional evidence along with appeal in respect of which the condonation of delay application is made are also dismissed.