

Bharat Refractories Ltd

Vs

Collector of Central Excise, Patna and Another

Civil Appeal No. 1668 of 1997

(J. S. Verma, S. P. Kurdukar JJ)

21.02.1997

ORDER

1. Leave granted.
2. The appellant filed an appeal to the Appellate Collector under Section 35 of the Central Excises and Salt Act, 1944, on 7-1-1982 against the order contained in letter dated 23-11-1981 read with letter dated 2-7-1981 of the Assistant Collector, Central Excise, Dhanbad. The appeal was dismissed by the Appellate Collector as time- barred by an order dated 25-1-1982. The appellant then preferred an appeal to the Tribunal which has been dismissed taking the view that the Appellate Collector had no power to condone the delay. Hence, this appeal by special leave.
3. The objection based on limitation arose because the proviso to subsection (1) of Section 35 of the Act enabling the Collector to condone the delay in filing the appeal for sufficient cause was inserted with effect from 11-10-1982 while in the present case the appeal to the Collector was filed and decided prior to that date when no such power was contained in Section a 35 of the Act. This is the view accepted by the Tribunal.
4. In our opinion, in the facts of the present case, it must be held that the appeal filed on 7-1-1982 before the Collector was in substance an appeal against the order contained in the letter of the Assistant Collector dated 23-11-1981 even though it had to be read with the earlier letter dated 2-7-1981 to make out the final order passed by the Assistant Collector. On this view, the appeal filed to the Collector on 7-1-1982 was presented within the prescribed period of limitation and the question of condonation of any delay does not arise. We hold accordingly.
5. In view of the above conclusion, it is clear that dismissal of the appeal by the Collector as time- barred is untenable for the above reason and, therefore, that appeal is required to be heard on merits. The Tribunal's order has also to be set aside for this reason.
6. Consequently, this appeal is allowed. The impugned orders dated 25-1-1982 passed by the Collector and dated 21-4-1989 by the Tribunal are set aside. The matter is remitted to the Collector (Appeals) for a fresh decision of the appeal on merits treating the appeal to be filed in time.