

(2012) 09 P&H CK 0391

High Court Of Punjab And Haryana At Chandigarh

Case No: C. M. No"s. 26854 to 26856-CII of 2011 and Central Excise Appeal No. 104 of 2011.

R.K. Ispat Ltd.

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision: Sept. 3, 2012

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 35G
- Limitation Act, 1963 - Section 5

Citation: (2013) 18 GSTR 264

Hon'ble Judges: G.S. Sandhawalia, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Jagmohan Bansal, for the Appellant;

Final Decision: Dismissed

Judgement

Ajay Kumar Mittal, J.

Application is allowed and the delay in refiling the appeal is condoned.

C.M. No. 26856-CII of 2011

Allowed as prayed for.

C.M. No. 26854-CII of 2011

2. This is an application u/s 35G of the Central Excise Act for condonation of 604 days" delay in filing the appeal.

3. Before deciding the said application, it may be advantageous to notice the facts. The assessee is engaged in the manufacture and export of nylon, polyester/blended yam. As per the provisions of the export import policy and customs notification dated June 3, 1997, the assessee could import capital goods and raw material without payment of duty. It was required to utilise the imported goods and raw

material in the manufacture of goods meant for export. The assessee imported yarn without payment of customs duty. The appellant was granted permission by the Assistant Commissioner of Central Excise to get the yarn processed from outside job workers who cleared 1,03,591.200 kg. yarn to various job workers and received fabric from them and sold the same to M/s. Dewas Fabrics Limited, M/s. Ganesh Overseas and M/s. Shiv Shakti Industries as deemed export. The adjudicating authority after investigation issued a show-cause notice dated September 5, 1996 to the assessee alleging diversion of imported material and raised a demand of Rs. 83.81 lakhs. The adjudicating authority vide the order dated April 15, 2008 (annexure A-1) held the assessee liable to pay duty on imported yarn. Regarding the question of raising demand twice, the adjudicating authority held that the demand in the other show-cause notice had been raised on different grounds. Feeling aggrieved, the assessee filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (in short "the Tribunal"). Along with the appeal, a stay application was also filed. On September 10, 2008 (annexure A-3), the Tribunal directed the appellant to deposit full amount of duty, i.e., Rs. 83.81 lakhs and 50 per cent. penalty within a period of eight weeks. On having failed to comply with the order, the Tribunal vide the order dated November 18, 2008 (annexure A-4) dismissed the appeal on the ground of non-compliance of stay order. Hence, the present appeal.

4. The copy of the order dated November 18, 2008 was sent to the assessee on January 1, 2009 and the same was received on January 5, 2009. The appeal could be filed within 180 days from the date of receipt of the order. Hence, there was a delay of 604 days in filing the appeal before this court.

5. Examining the legal position relating to condonation of delay u/s 5 of the Limitation Act, 1963, it may be observed that the hon"ble Supreme Court in [Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another](#), laying down the broad principles for adjudicating the issue of condonation of delay, in paragraphs 14 and 15 observed as under:

14. We have considered the respective submissions. The law of limitation is founded on, public policy. The Legislature does not pre- scribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the Legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression "sufficient cause" employed in section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation

of delay, this court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate [Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, N. Balakrishnan Vs. M. Krishnamurthy,](#) and [Vedabai @ Vijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others,](#)

6. In the present case, the plea for condoning the delay is that the appellant is a sick company and the appellant-company was lying closed when the impugned order was received. Only one male director was looking after the affairs of the company who due to heavy losses and involvement in various cases, could not file the appeal within time. The company is likely to revive now. On these premises, condonation of delay has been prayed.

7. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking the totality of events which had taken place in a particular case. There is a colossal delay of 604 days in filing the appeal. The narration of cause for claiming condonation of delay in filing the appeal would not fall within the expression "sufficient cause" so as to entitle the assessee for condonation of inordinate delay of 604 days in filing the appeal. In view of the above, there is no merit in the application for condonation of delay and the same is hereby dismissed. Consequently, the appeal is also dismissed as barred by time.