(2010) 02 MAD CK 0223

Madras High Court

Case No: CMA. No. 294 of 2010 and M.P. No. 1 of 2010

Dhanalakshmi Steels		APPELLANT
	Vs	
Cestat, Chennai		RESPONDENT

Date of Decision: Feb. 15, 2010

Acts Referred:

- Central Excise Rules, 1944 - Rule 96(ZP)
- Central Excises and Salt Act, 1944 - Section 37C, 37C(1), 37C(2), 38A

Citation: (2012) 275 ELT 525 : (2012) 25 STR 126

Hon'ble Judges: R. Banumathi, J; M.M. Sundresh, J

Bench: Division Bench

Advocate: G.R.M. Palaniappan, Councel, for the Appellant; Vikram Ramakrishnan, ACGSC, for the Respondent

Final Decision: Dismissed

Judgement

R. Banumathi, J.
When the appeal came up for admission, with the consent of learned counsel for both sides, the appeal was taken up for final hearing.

2. Whether the service of adjudication order passed by the Commissioner of Central Excise (Appeals) on daughter-in-law of the Managing Partner of the appellant firm is a valid service in accordance with Section 37C of the Central Excise Act, 1944 is the short point falling for our consideration.

3. The brief facts are that the Commissioner of Central Excise (Appeals) passed the order on 23-9-2004 confirming the demand of Rs. 38,05,313/- under Rule 96(ZP) of Central Excise Rules, 1944 r/w Section 38A of Central Excise Act, 1944 for the period from April, 1998 to March, 1999 and April, 1999 to March, 2000 together with interest and also imposing penalty of equal amount and the said order passed by the Additional Commissioner of Central Excise was communicated by registered post on 7-10-2004 and the order was received by daughter-in-law of Mr. R.

Ranganathan, Managing Partner of the appellant firm. The period of limitation is to be computed from 7-10-2004.

4. According to the appellant, the appellant firm received the copy of the order only on 6-12-2007 and filed the appeal before the Tribunal in December, 2007. Holding that the period of limitation is to be computed from 7-10-2004 the appeal filed is extremely belated and the delay in filing the appeal is beyond the period which he is empowered under the statute to condone, the appeal was rejected by the Commissioner (Appeals) and the Tribunal has also dismissed the appeal preferred by the appellant, which is challenged in this appeal.

5. The appellant has filed the appeal, raising the following substantial questions of law :

(i) Whether the order of the Tribunal holding the alleged service on the daughter-in-law of a partner in a partnership firm who is not an authorised agent of the firm is contrary to Section 37C of the Central Excise Act ?

(ii) Whether the order of the Tribunal stands vitiated for deciding the validity of the service on the daughter-in-law of the partner of the appellant''s firm without examining as to whether the said daughter-in-law is an authorised agent of the appellant firm within the meaning of Section 37C of the Central Excise Act?

(iii) Whether the order of the Tribunal holding the service on the daughter-in-law of a partner of the appellant''s firm is contrary to the settled rule when the statute prescribes the method and manner for the performance of an act viz., the mode of service of order, notice, summons etc., such act viz., service of order, notice, summons etc., ought to be performed only in that manner and in no other manner?

(iv) Whether the order of the Tribunal stands vitiated for failing to take into account the relevant factor viz., Mrs. Thilagavathy is not an authorised agent of the appellant firm and thus the service is bad and invalid?

6. We have heard Mr. G.R.M. Falaniappan, learned counsel for the appellant and Mr. Vikram Ramakrishnan, learned counsel for the respondents.

7. Learned counsel for the appellant submitted that the order of the Tribunal stands vitiated for deciding that the service on the daughter-in-law of the Managing Partner of the appellant''s firm is a valid service. It was further contended that as per Section 37C of the Central Excise Act, 1944, service on daughter-in-law cannot be said to be a valid service of notice which aspect was not considered by the Tribunal. Taking us through Section 37C of the Act, learned counsel would further submit that legislature in its wisdom has made a clear distinction in Section 37C(1) by using the expression ''service''... and expression ''a deemed service'' in sub-clause (2) of Section 37C.

8. Section 37C deals with the service of decisions, orders, summons etc., and it reads as under :

37-C. Service of decisions, orders, summons, etc.- (1) Any decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be served -

(a) by tendering the decision, order, summons or notice, or sending by registered post with acknowledgement due, to the person for whom it is intended or his authorised agent, if any;

....

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post or a copy thereof is affixed in the manner provided in sub-section (1).

9. There is no denying that the copy of the order was served upon the daughter-in-law of Mr. Ranganathan, Managing Partner of the appellant firm. It is also not in dispute that notice has been served in the correct address of the Managing Partner and the appellant firm cannot raise the plea of non-service of notice. Even though the expressions used in Section 37C(1)(a) are "the person for whom it is intended or his authorised agent", in our considered view, the order having been served in the correct address is a valid service of notice in accordance with Section 37C.

10. Learned counsel for the appellant placed reliance upon the decision of the Allahabad High Court in Sakari Sangh Limited v. Commissioner of Sales Tax [(1987) 066 STC 0024], which arose under Rule 77 of the U.P. Sales Tax Rules and contended that notice served upon the member of a family cannot be said to be a valid service. In the said case, notice was served upon the daughter of the Secretary of the Society. In such facts and circumstances, learned single Judge of Allahabad High Court has held that a co-operative society cannot be said to be having a family and therefore, the service on the daughter of the Secretary of the Society cannot be said to be a valid service. The case on hand stands on a different footing and the ratio of the said decision is not applicable.

11. Learned counsel has also placed reliance upon the Division Bench judgment of the Calcutta High Court in Matigara Rolling Mills (P) Ltd. Vs. Commissioner of C. Ex., . In the said case the factory was close and notice sent to the factory was returned with an endorsement "refused" by a person who was not in service after 1-2-2001. Pointing out that the factory remained closed and stopped functioning, which information was already with the Department and refusal by a person who was not in service cannot be a refusal by an authorised agent, the Division Bench of Calcutta High Court has held that it would not amount to a refusal by an authorised agent so

as to come within the purview of Clause (a) of Section 37C. The factual matrix of the said case stands entirely on a different footing.

12. Learned counsel has also placed reliance on the judgment of the Allahabad High Court in Mahavir Prasad Amrit Lal v. Commissioner of Sales Tax, U.P. [(1977) 039 STC 0531], which again arose under Rule 77 of U.P. Sales Tax Rules. In the said case, notice was served upon the servant. In such circumstances, the learned single Judge of Allahabad High Court took the view to hold that the service of notice on a servant is sufficient compliance of Rule 77 of U.P. Sales Tax Rules would be to obliterate the distinction in law which exists between a servant and an agent.

13. In the case on hand, the order was served upon the daughter-in-law of the Managing Partner even on 7-10-2004. According to the appellant, the order copy was received only on 6-12-2007. Absolutely there is no explanation to show as to when the appellant firm got the information as to the serving of the order and as to what happened in the interregnum period of three years. No plausible explanation is forthcoming from the appellant firm as to the inordinate delay in filing the appeal. In such circumstances, the Tribunal has rightly dismissed the appeal, declining to condone the delay.

14. We do not find any question or law much less substantial question of law warranting interference in the order of the Tribunal. Therefore, the appeal is dismissed. No costs. Consequently connected miscellaneous petition is dismissed.