

(2004) 08 AP CK 0004

Andhra Pradesh High Court

Case No: Writ Petition No. 6828 of 2004

Praga Tools Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Aug. 3, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226
- Customs Act, 1962 - Section 128

Citation: (2010) 254 ELT 239

Hon'ble Judges: S. Ananda Reddy, J; Bilal Nazki, J

Bench: Division Bench

Advocate: J.V. Prasad, for the Appellant; A. Rajashekar Reddy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Bilal Nazki, J.

Heard the learned Counsel for the parties. Counter has been filed.

2. An order is passed by the Commissioner of Customs (appeals), Mumbai, declining to grant extension of time in presenting the appeal. The order of the Commissioner was challenged before the Customs, Excise & Service Tax Appellate Tribunal, West Regional Bench at Mumbai, by way of appeal provided under the Customs Act, 1962. That has also been dismissed. Both the remedies were exhausted at Mumbai. Now challenging these orders, the writ petition has been filed before this Court at Hyderabad. Basically, the petitioner is aggrieved of the order passed by the Assistant Commissioner of Customs, Mumbai, dated 26-2-1996. The petitioner wants that the orders passed by the appellate authorities in appeal be set aside, and if that was not possible, alternatively, the order dated 26-2-1996 passed by the Assistant Commissioner of Customs, Mumbai should be quashed.

3. We fail to understand the logic behind such an argument. Against the basic order dated 26-2-1996, appeal is provided for, which was availed of by the petitioner, but beyond time. The order suffered in the appeal was again challenged before another appellate authority unsuccessfully. Now the petitioner cannot be allowed to turn around and be permitted to challenge the order dated 26-2-1996, after a lapse of eight (8) years in the High Court of A.P., at Hyderabad, and we are not expected to exercise our jurisdiction under Article 226 of the Constitution of India in this factual back ground.

4. Now coming to the orders passed by the appellate authorities, the first appellate authority did not condone the delay of seven (7) months sixteen (16) days on the ground that it had no power u/s 128 of the Customs Act, 1962. Three months period is provided for filing the appeals and the Collector (Appeals) is empowered to allow further period of three months for presenting the appeal, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal, within the period of three months. In any case, the appeal cannot be presented before the Collector beyond six months. Therefore, in our view the order of the appellate authority cannot be faulted. On the same grounds/the second appellate authority dismissed the appeal. We have our own doubts whether the writ petition could be filed in this Court at all, because the whole controversy has arisen at Mumbai and the cause of action to the petitioner has also arisen at Mumbai. But in view of the findings herein above, we do not settle that question.

5. The writ petition has no merits and is accordingly dismissed. No costs.