

2014 (1) ECS (228) (Tri - Del.)

Customs, Excise & Service Tax Appellate Tribunal
West Block No. II, R.K. Puram, New Delhi - 110066
COURT NO. II

Date of Decision : 11.02.2014

HARSH ANIL VASANT

Vs.

C.C., NEW DELHI

Custom COD Application No. C/COD/268/2012

Custom Stay Application No.C/S/1836/2012 IN

Customs Appeal No. C/225/2012

[Arising out of Order-in-Original No.VIII (ICD)6/TKD/Comm/Adj.
/31/09, 39/2010 dated 28.08.2010 passed by the Commissioner of
Customs, Delhi].

Appearance:

Shri . V.V. Gautam, Advocate

Shri Piyush Kumar, Advocate

Shri. Govind Dixit, DR

For the Appellant

For the Respondent

CORAM:

Hon'ble Mr.D.N.Panda, Judicial Member

Hon'ble Mr.Manmohan Singh, Technical Member

(FINAL ORDER NO. 50425/2014)

“Right of redressal by way of appeal granted by law against wrong complained is a valuable right which is exercisable within the time prescribed by statute. Civil society expects that litigation should come to an end by prescription of limitation in the statute to ensure peace to other side and courts freed from time barred litigation being tried. Right diminishes with the passage of time and remedy is barred thereafter. A litigant has no right to drag the other side by a time barred litigation.” (Para 12)

“Life span to legal remedy is prescribed to save time of judicial forums without the precious time of courts wasted trying a time-barred remedy lost by afflux of time. Such remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy which is enshrined in the maxim interest reipublicue up sit finis litium (It is for general welfare that a period be put to litigation). Accordingly, unreasonable and unexplained delay renders a remedy fatal.” (Para 13)

“Merely stating that the appellant received the impugned order late for reasons attributable to him, he is not absolved of his obligation to adhere to the limitation prescribed by law. Laxity does not add to longevity of a remedy which exhaust with the passage of time following doctrine of resjudicata.” (Para 14)

PER: D.N.PANDA

1. Filing appeal on 08/06/2012 against order of adjudication dated 31/08/2010, the appellant stated in his appeal memo that the impugned order was served on him on 04.03.2012. Along with the same, he also filed an application for condonation of delay without stating number of days of delay in such application. Number of days of delay was left blank in the application. It was averred in the application that:
 - A. That the Department did not supply copy of the certified copy of the adjudication order until 04/03/2012 for which the appellant ran from pillar to get the certified copy of the impugned order to file the appeal.
 - B. The Department did not supply various documents relating to adjudication proceeding.
 - C. Various communications were addressed to the Commissioner, ICD for the supply of the documents and one such application was as per Annexure -A to the application.
 - D. Appellant came in appeal before Tribunal as soon as he received the impugned order. But registry asked him to enclose certified copy of the same for which the appellant was to again approach learned Commissioner to get certified copy of the order. Therefore there was delay of (left blank) days occurred in the process.
 - E. That the appellant was prevented by sufficient cause in not filing the present appeal in time and there was no intention to make delay.
 - F. That the appellant has a good case on merit in his favor and delay caused was neither intentional nor deliberate and appellant shall suffer irreparable loss and injury if delay is not condoned.
 - G. Lastly it was averred that the delay in filing the appeal was due to unavoidable circumstances.
2. Strangely the application for condonation of delay was without mentioning number of days of delay and that remained blank. That was notarized leaving the age of the deponent also blank. When such defect was pointed out, the appellant came up filing an

application on 01/10/2012 stating that inadvertently the number of days of delay not mentioned in Para 3 of the application was 3 days and age of the appellant inadvertently skipped was 52 years. The application so filed was not verified by an affidavit for which again on 11.07.2013, the appellant filed an affidavit without explaining the number of days of delay.

3. Above approach of Appellant showed casual approach to law for which enquiry was made to ascertain whether the application for condonation of delay was bonafide.
4. Revenue stated that the impugned order was dispatched to the appellant at the address on record by speed post on 04/09/2010 under serial number 32664 as was apparent from the dispatch Register maintained in the office of the learned Adjudicating Commissioner and the order so sent was not return back by postal authority un-served.
5. Learned Advocate Sri Goutam appearing on behalf of the appellant brought out that there was neither deliberate delay nor malafide to file a belated appeal before Tribunal. Virtually there was only 3 days delay in filing appeal upon receipt of the certified copy of the impugned order on 5.3.2012 and Appeal was filed on 8.6.2012.
6. Filing a date chart, learned advocate explained that the events' depicted at page 12 of the paper book show that there were repeated applications made to the learned adjudicating authority to serve copy of the impugned order. He also drew attention to para 24, 25, 26 and 27 of the date chart and submitted that 3 days of delay occurred in the process may be condoned and appeal admitted.
7. Ld. DR for Revenue, opposing above prayer of appellant submitted that vhen the order sent as above did not return back by postal authority un-served, which proves service of the adjudication order on the appellant at the given address. Inviting attention to page 36 of the Order in Original, Revenue submitted that present Counsel Shri Gautam was also advocating before Id. Adjudicating Authority. He had exclusive knowledge of the status of adjudication. Also another Advocate Shri Rama Kant Gaur who was appearing before Adjudicating Commissioner had thorough knowledge of the adjudication proceeding and conclusion thereof. Therefore appellant cannot plead innocence when he along with one Mool Chand Sharma was caught red handed and arrested for mis-declaration of the offending import. The consequence of adjudication was within the special knowledge of all of them since they have faced criminal trial.
8. Inviting attention to letter dated 21.12.2010 of Harsh Anil Vasant (at page 27 of the paper book of the appellant), Revenue submitted that

Shri Gautam, Id. Advocate had signed reply to Show Cause Notice on 17.06.2009 in the case of Swaraj International owned by Harsh Anil Vasant involved in the customs fraud along with Moolchand Sharma in the self same adjudication. Therefore, Harsh Anil Vasant cannot plead to be a stranger to the adjudication consequence. He deliberately waited till expiry of limitation to approach the Department with fake plea of non-receipt of the impugned order to avoid liability.

9. Revenue repeatedly submitted that this appellant had hand in glove with the exporter to get undervalued invoice and misdeclare value as well as description of the offending imports and clear the same with the abetment of Moolchand Sharma. Revenue being defrauded by this appellant and Moolchand Sharma, any leniency shown to him condoning delay shall seriously prejudice interest of revenue and that shall be a bonus to the offenders.
10. Heard both sides and perused the record.
11. Prima facie, it appears that arrest of the appellant along with the abettor Moolchand Sharma does not show that the appellant was an innocent and unaware of the status of adjudication. He had painted a gloomy picture to gain misplaced sympathy.
12. Right of redressal by way of appeal granted by law against wrong complained is a valuable right which is exercisable within the time prescribed by statute. Civil society expects that litigation should come to an end by prescription of limitation in the statute to ensure peace to other side and courts freed from time barred litigation being tried. Right diminishes with the passage of time and remedy is barred thereafter. A litigant has no right to drag the other side by a time barred litigation.
13. Life span to legal remedy is prescribed to save time of judicial forums without the precious time of courts wasted trying a time-barred remedy lost by afflux of time. Such remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy which is enshrined in the maxim interest reipublicue up sit finis litium (It is for general welfare that a period be put to litigation). Accordingly, unreasonable and unexplained delay renders a remedy fatal.
14. Merely stating that the appellant received the impugned order late for reasons attributable to him, he is not absolved of his obligation to adhere to the limitation prescribed by law. Laxity does not add to longevity of a remedy which exhaust with the passage of time following doctrine of resjudicata. Casual approach of appellant shows its scanty regard to law. Had there been bonafide, the

appellant would have pursued its right without painting a gloomy picture and abusing the process of law.

15. No vigilant attitude of appellant is visible from record. Length of deliberate delay has crippled him to be successful applicant without a bonafide. He caused prejudice to Revenue coming to court without clean hands with a deliberate delay. He preferred to postpone his remedial measure without being vigilant and unmindful of the consequence of delay; his malafides may not be ruled out. Record does not reveal that before limitation and after that, appellant was conscious and vigilant to approach Court for remedy. An aggrieved who has genuine cause would not prefer to forgo his remedy which vanishes with the passage of time. The appellants without being vigilant, has lost his right to remedy.
16. A man of ordinary prudence and diligence shall not prefer to prejudice his interest seeking appeal remedy belatedly. While a vigilant only gets leniency for condonation of delay, an indolent fails to receive such consideration. Following the ratio laid down in the case of Collector Vs Land Acquisition, Anantnag and other Vs Mst. Katiji and Others -[1987 (28) ELT 185 (SC)] it may be said that just because the Tribunal believes that ordinarily a litigant does not stand to benefit filing an appeal late and refusal to condone delay may make the appellant remediless, the indolent appellant has no right to abuse the process of law. He has no preemptory right to condonation of delay to drag Revenue to litigation.
17. We are conscious that there cannot be presumption of deliberate delay on account of culpable negligence or mala fide. But reasons of delay explained must be acceptable to law. The appellant failed to satisfy to law that it had made every effort to come out with clean hands to seek condonation of delay ascertaining status of adjudication after completion of hearing. When his associate Shri Mool Chand Sharma suffering penalty in the deal of mis-declared import in the self same adjudication came in appeal duly to Tribunal.
18. In view of above factual matrix and law stated, the application of the appellant for condonation of delay fails to succeed. Accordingly that is dismissed and both stay application as well as appeal thereby fail to be maintained for which those stand dismissed.

[Pronounced in the open Court on 11.02.2014)