

2013 (4) ECS (98) (Tri – Ahd)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, AHMEDABAD
COURT**

M/s Santowin Polyester Ltd.

Vs.

Commissioner of Central Excise & Service Tax, Vapi

Application No. E/Stay/11827 to 11829/2013
Appeal No. E/12053 to 12055/2013 – SM
Arising out of : OIA No. SRP/244 to 246/Vapi/2012, dated 5.02.2013
Passed by : Commissioner of Central Excise, Customs, Service Tax (Appeals),
Vapi

Represented by :

Shri Rahul Gajera, Advocate.
Shri J. Nair, (A.R.)

For Appellant
For Respondent

CORAM:

MR. M. V. RAVINDRAN, HON'BLE MEMBER (JUDICIAL)

Date of Hearing/Decision: 18.10.2013

ORDER No. A/11355 - 11357/AHD/2013, dated 18.10.2013

“The reasons given by the appellants for condonation of delay are totally unacceptable, inasmuch as having delayed the proceedings before the adjudicating authority and subsequently stating that on receipt of such adjudication order they were under bona fide belief that the said adjudication having passed beyond the stipulated period, is misconceived and incorrect. To my mind, it is totally unacceptable reason for condonation of delay. However, any delay would be considered with pragmatism in a justice oriented approach, rather than the technical

detection of sufficient cause; it cannot attributed to the adjudicating authority atleast in this case.” [Para 6.3]

Per: Mr. M. V. Ravindaran:

1. These applications are filed for waiver of pre – deposit of amounts of duty liability confirmed against the main appellant and penalty on the main appellant as well as on other appellants.
2. Heard both sides and perused the records.
3. On perusal of the records, I find that the issue lies in a narrow compass hence the appeals themselves can be disposed of at this stage. After disposing the stay petitions and with the consent of both sides. I take up the appeals themselves for consideration and disposal.
4. The learned Counsel for the appellants submits that the first appellate authority has dismissed the appeals on the ground that the appellant not given justifiable reason for belatedly filing of appeal by 23 days and he would draw my attention to the findings of the adjudicating authority. It is his submissions that the appellant in first round of litigation sought for some documents, which was not given to them and this Bench vide Final Order No. A/2268 – 2270/WZB/AHD/2011 dated 20.12.2011 set aside the impugned order and remanded the matter back to the adjudicating authority to reconsider the issued after giving the relied upon document to the appellant, pass a fresh order with a period of three months from the date of receipt of the order. It is the submission that the Order – in – Original was passed beyond the period, which was give by the Tribunal and hence, they were under bona fide belief that the said order is not valid and there is no need to file an appeal before the first appellate authority, therefore, these are sufficient reasons for not filing the appeal within the stipulated period before the first appellate authority. The learned Counsel relies on the decision of the Hon’ble Supreme Court in the case of State of Nagaland Vs. Lipok AO – [2005 (183) ELT 337 (SC)] and submits that the length of delay is immaterial but its shortness is a circumstance in exercise of discretion by Court. It is his submission that the said decision of the Hon’ble Apex Court would cover the issue in condonation of delay and first appellate authority should have condoned the delay. It is also his submission that Hon’ble High Court of Punjab & Haryana in the case of Gosson Air Conditioning Vs. Commissioner of Central Excise, Chandigarh – [2006 (205) ELT 44 (P & H)] has held that request for condonation of delay should be considered with pragmatism in a justice oriented approach, rather than the technical detection of sufficient cause. It is his submission that the first appellate authority should have condoned the delay and decided the matter after hearing the appellant on merits. It is also his submission that the Division Bench of the Tribunal in the case of Jewel International Vs.

Commissioner of Central Excise, Jodhpur – [2009 (247) ELT 204 (Tri. Del)] has held that though the action of the assessee reveals questionable modus operandi, the assessee shall suffer if their application is thrown out at threshold without granting an opportunity of hearing the matter, hence delay be condoned. It is his submission that the appellant's case in this matter is directly covered by the decision of the Hon'ble Supreme Court.

5. The learned AR appearing for the Revenue, on the other hand, would draw attention to the findings recorded by the first appellate authority for not condoning the delay of 23 days in filing the appeal filed before him. It is the submission that the appellant themselves have delayed the proceedings before the adjudicating authority the subsequently trying to put the blame on the adjudicating authority in seeking condonation of delay.
6. I have considered the submissions made at length by both the sides and perused the records.
- 6.1. On perusal of the records, it is seen that there is no dispute that in the first round of litigation, this Bench has directed the adjudicating authority to provide relied upon documents to the appellant for effective defence of the case before him. The said order of the Tribunal directed the adjudicating authority to furnish a copy of the relied upon documents to the appellant within a period of two weeks, which was complied to by the adjudicating authority and the copies were given to the appellant on 12.01.2012. As per the order of the Tribunal, the appellants were to be heard and the order was to be passed within three months from the date. I find that the first appellate authority in his Order – in – Appeal in para 8 has recorded the following for not accepting the cause given by the appellant in the application for condonation of delay:-

“8. While the Tribunal had fixed the time of three months for the adjudication by the original authority, the Hon'ble Tribunal specifically fixed time of two weeks for the appellants to file reply after getting the documents from the department. The department complied with the order of the Tribunal and furnished copies of documents to the appellants as early as on 12.1.2012. As such the appellants should have filed reply within two weeks after receiving the copies of documents. They failed not only to file reply but did not co – operate with the adjudicating authority in complying with the directions of the Tribunal. The applicant's contentions cannot be entertained, because the delay in adjudication is only due the fact that they had failed to comply with the condition set by the Tribunal by not filing reply within the stipulated time of two weeks. I view the case as deliberate attempt by the appellants to delay the matters and forestall the adjudicating authority from passing order with the time limit set by the

Tribunal. In the circumstances, delay in passing the impugned order can only be laid at the doors of the appellants /applicant and not at the hands of the adjudicating authority. On this ground alone, the present applications for condonation of delay deserve to be rejected.”

- 6.2. I find that the appellant’s reason for seeking the condonation of delay before the first appellate authority was as under : -

“Tribunal directed the department to issue order not later than 3 months from the date of receipt of order. Accordingly, the department was required to pass the order by March, 2012, however the department issued the order by the end of May, 2012. Accordingly, the appellants believed that the order passed by the Additional Commissioner was not legal and proper and beyond the directive of CESTAT. On seeking legal advice they were informed that the appeal is required to be filed and the appellants immediately made arrangement to file the appeals.”

- 6.3. It can be seen from the records and findings of the first appellate authority that the reasons given by the appellants for condonation of delay are totally unacceptable, in as much as having delayed the proceedings before the adjudicating authority and subsequently stating that on receipt of such adjudication order they were under bona fide belief that the said adjudication having passed beyond the stipulated period, is misconceived and incorrect. To my mind, it is totally unacceptable reason for condonation of delay. However, any delay would be considered with pragmatism in a justice oriented approach, rather than the technical detection of sufficient cause; it cannot attributed to the adjudicating authority atleast in this case. Since no other valid reason or justifiable cause was propagated by the appellant before the first appellate authority. I am of the view that the first appellate authority was correct in coming to the conclusion that appellant had not justified the belated filing of appeal before him.

7. In view of the foregoing, I do not find any reason for interfering with the order passed by the first appellate authority. Accordingly, the appeals are rejected.

(Dictated and pronounced in the Court)