

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2768/2007.2773/2007 WITH E/S/2453 & 2458/07

Date 13/02/2008

Assistant Registrar
C.E.S.T.A.T. New Delhi

To :
M/S MARGRA INDUSTRIES LTD
D-1, SECTOR XI, NOIDA.
201301


M/S MARGRA INDUSTRIES LTD
C.C.E. NOIDA

Appellant
Vs
Respondent

STAY ORDER No. 142-143/08-EX.

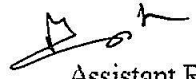
I am directed to transmit herewith a certified copy of Final order No. 51-52/2008 Excise
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

dated 25-1-08


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. NOIDA
B-123, SECTOR 5, NOIDA.
2. Adv. / Consult
MR.SHEKHAR VYAS
P-13, SECTOR 12, NOIDA
3. G.D.R.
~~T.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, L.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file


Assistant Registrar
(Excise Appeal Branch)

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI, COURT NO.1**

**EXCISE STAY APPLICATION NOS. 2453 & 2458 OF 2007 IN AND
EXCISE APPEAL NOS. 2768 & 2773 OF 2007**

Date of Hearing/Decision: 25.1.2008

[Arising out of Order-in-Appeal Nos.59-60/CE/APPL/NOIDA/2007 dated 29.6.2007 passed by the Commissioner (Appeals), Central Excise, Noida]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President

Hon'ble Mr. T.K. Jayaraman, Member (Technical)

-
1. Whether Press Reporters may be allowed to see :
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982.
 2. Whether it should be released under Rule 27 of the :
CESTAT (Procedure) Rules, 1982 for publication
in any authoritative report or not?
 3. Whether Their Lordships wish to see the fair copy :
of the Order?
 4. Whether Order is to be circulated to the Departmental :
authorities?
-

M/s. Margra Industries Ltd.

Applicant

Versus

CCE, Noida

Respondent

Appearance:

Mr. Mr. Shekhar Vyas, Advocate for the Appellant

Mr. V. Chaudhry, Authorized Representative (Jt.CDR) for the Respondent

Coram: Mr. Justice S.N. Jha, President

Mr. T.K. Jayaraman, Member (Technical)

*Final ORDER No. 51-52/08-EX
Stay order no. 142-43/08-EX*

Per Justice S.N. Jha:

These appeals came up for hearing on the point of stay. When the appeals were taken up earlier, it was submitted by the learned Departmental Representative on behalf of the Revenue that no useful purpose will be served by granting stay, as having regard to the nature of the order of the Commissioner (Appeals), the present appeals are not fit to be entertained. It

was stated that the appeals arise from an order by which the appeals preferred by the appellant before the Commissioner (Appeals) were dismissed on the ground of limitation. It was pointed out that in terms of the proviso to Section 35 of the Central Excise Act, 1944 (hereinafter referred to as 'the Act'), appeal can be filed within a period of sixty days; in an appropriate case, on sufficient cause being shown by the appellant, the delay in preferring the appeal may be condoned but not beyond thirty days. In other words, appeal can be preferred within ninety days at the most, and any appeal preferred beyond ninety days has to be dismissed on the ground of limitation as the Commissioner has no discretion or jurisdiction to condone the delay beyond that period. The point involved being of significance, the hearing was postponed to 24.1.2008 and the parties were heard on the point at length.

2. Section 35 of the Act may be quoted in extenso at the outset as under:-

"SECTION 35. Appeals to Commissioner (Appeals), (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) within sixty days from the date of the communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

....."

3. From a bare reading, it is manifest that where the Commissioner is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the prescribed period of sixty days, he may extend the period upto thirty days more. Any order of the Commissioner dismissing the appeal filed beyond the period of ninety days, therefore, cannot be said to be illegal.

4. It was submitted on behalf of the Revenue that there being no illegality in the order of the Commissioner, inasmuch as he has no option but to dismiss the appeal as time-barred, it will be futile to entertain this appeal. Question arose as to whether the limitation on the power of Commissioner in entertaining the appeal filed beyond the period of ninety days applies to the Tribunal as well or the Tribunal in an appropriate case on sufficient cause being shown can direct the appeal to be heard by the Commissioner on merit. On behalf of the appellant it was submitted that if this Tribunal were to confine itself merely to the question of legality of the order, without taking into account the attending facts and circumstances in which the appeal could not be filed within the period of limitation, or the extended period, the remedy of appeal under Section 35B before this Tribunal would be rendered nugatory.

5. After giving our anxious consideration to the submissions made, in the light of the decisions to which our attention was drawn, we are of the opinion that the submissions/objections raised on behalf of the Revenue are well founded and must prevail. In the recent case of **Singh Enterprises Vs. CCE, Jamshedpur**, 2008(221) ELT 163(SC), the Supreme Court had occasion to consider the question in the context of Section 35 of the Act itself. The appeal before the Supreme Court had arisen from the order of the High Court refusing to interfere with the order of the Commissioner (Appeals) by which the assessee's appeal had been dismissed on the ground of limitation as it had been preferred beyond the period of thirty days from the date of expiry of sixty days prescribed for filing the statutory appeal. On behalf of the assessee a submission was made that Section 5 of the limitation Act, 1963 conferred power upon the Court to condone the delay. The submission was rejected observing that in view of the provisions of Section

35 of the Act“ there is complete exclusion of Section 5 of the Limitation Act”. It may be mentioned here that Section 5 of the Limitation Act was sought to be invoked in view of the provisions of sub-section (2) of Section 29 of the Act which lays down that where any special or local law prescribes for any suit, appeal or application, any period of limitation different from the period prescribed by the schedule of the Limitation Act, the provisions contained in section 4 to 24 (inclusive) shall apply only “in so far as, and to the extent which they are expressly excluded by such appeal or local law”. Provisions of Section 5 of the Act having been held to have been expressly excluded in view of the express provisions of Section 35 of the Act, there is no scope for taking a different view and holding that by virtue of Section 29(2) read with Section 5 of the Limitation Act, the Court can condone the delay even if the appeal is preferred after the extended period of thirty days.

6. Indeed, it is doubtful if the power under Section 5 can be invoked at all as the said provision applies only to courts and not to the Tribunals or quasi-judicial bodies under special statutes. In this connection reference may be made to the cases of **Ujjain Alloys V. State of U.P.**, AIR 1962 SC 1621 and **Commissioner of Sales Vs. Parson Tools and Plant**, 35 STC 413(SC).

7. The decision of the Supreme Court in **Singh Enterprises** provides a complete answer to the question raised at the bar; we may nevertheless add that various statutes contain identical provisions as found in Section 35 proviso of the Central Excise Act and the question as to whether the Appellate Authority has any discretion to condone the delay even where sufficient cause is shown if the appeal has been preferred beyond the limit fixed by the statute, has arisen for consideration on many occasions in the past. The Courts have unanimously held that there is no such power for

condonation and the appeal has to be dismissed summarily on the ground of limitation. We may notice in this regard the case of **Mohd. Ashfaq Vs. State Transport Appellate Tribunal**, AIR 1976 SC 2161 arising under Motor Vehicles Act, 1939, section 58(2) whereof contained a provision fixing time limit for making application for renewal of permits. It would be appropriate to quote the relevant observations as under :-

"8. It is, therefore, clear that sub-section (3) of Section 58 confers a discretion on the Regional Transport Authority to entertain an application for renewal when it is made beyond the time-limit specified in the proviso to sub-section (2), but not more than 15 days late and the discretion is to be exercised in favour of entertaining the application for renewal when it is shown that there was sufficient cause for not making it in time. Now the question which arises is; does Section 5 of the Limitation Act, 1963 apply so as to empower the Regional Transport Authority, for sufficient cause, to entertain an application for renewal even where it is delayed by more than 15 days? Section 29, sub-section (2) of the Limitation Act, 1963 makes Section 5 applicable in the case of an application for renewal unless its applicability can be said to be expressly excluded by any provision of the Act. The only provision of the Act sought to be pressed into service for this purpose was sub-section (3). Does sub-section (3) expressly exclude further extension of time under Section 5? If it does, then Section 5 cannot be availed of by the appellant for condonation of the delay. Sub-section (3) in so many terms says that the Regional Transport Authority may condone the delay in making of an application for renewal and entertain it on merits provided the delay is of not more than 15 days. This clearly means that if the application for renewal is beyond time by more than 15 days, the Regional Transport Authority shall not be entitled to entertain it, or in other words, it shall have no power to condone the delay. There is thus an express provision in sub-section (3) that delay in making an application for renewal shall be condonable only if it is of not more than 15 days and that expressly excludes the applicability of Section 5 of Indian Limitation Act in cases where an application for renewal is delayed by more than 15 days".

Reference may also be made to the following observations in the case of

Commissioner of Sales Vs. Parson Tools & Plant, 35 STC 413 :-

"Thus the principle that emerges is that if the Legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be

extended, in the maximum, only up to a specified time-limit and no further, then the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14 (2) of the Limitation Act”.

8. It is unnecessary to multiply decisions which are available in plenty.

In view of the clear enunciation of law by the Apex part it is evident that the Commissioner (Appeals) committed no error in dismissing the appeal on the ground of limitation. Question is whether this Court can direct the Commissioner to hear the appeal on merit. The Supreme Court in the case **Singh Enterprises Vs. CCE, Jamshedpur** (supra) rejected a similar contention observing that such a direction would render a specific provision providing for limitation rather otiose.

9. In the above premises, the objection taken on behalf of the Revenue is well founded and must be accepted. As this Tribunal cannot issue any direction to the Commissioner (Appeal) to hear the appeals of the assessee on merit, it would be futile to entertain the appeals. The appeals are accordingly dismissed.

[Dictated and pronounced in the open Court]

[Justice S.N. Jha]
President

[T.K. Jayaraman]
Member (Technical)