

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

Appeal No. C/636 /2007-637 /2007

Date 04/02/2008

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

To :
SH. RAMU GUPTA
S/O LATE SH. D.N.GUPTA R/O MOHALLA GARHI,
POST & POLICE STN. PAWAYAL, DISTT.
SHAHJAHANPUR

SH. RAMU GUPTA

C.C.E. LUCKNOW

Appellant

Vs

Respondent

dated 29/1/08

I am directed to transmit herewith a certified copy of Final order No. C/13-14/08 Customs dated 29/1/08 passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax

Misc Order No C/11-12/08
Stay Order No C/16-17/08

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent

C.C.E. LUCKNOW

7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult

MR.NAVEEN MULLICK,ADV

B-388, MEERA BAGH, N.DELHI

3. S.D.R.

4. J.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, I.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
(Customs Appeal Branch)

1 SH. AMIT GUPTA

S/O LATE SH. D.N.GUPTA R/O MOHALLA GARHI, POST & POLICE STN. PAWAYAL, DISTT. SHAHJAHANPUR

Per. S.S. Kang :-

Heard both sides. The common issue involved in these applications, therefore they are being taken up together. The applicant filed these applications for condoning the delay of almost 10 years. The impugned order was passed on 18/09/97, whereas the appeals were filed on 3rd October 2007.

2. Contention of appellant is that impugned order was never served upon the applicant. It was only in the year 2006, when recovery proceedings were started. The applicants came to know about the adjudication order. Thereafter applicants approached Hon'ble Allahabad High Court by way of filing writ-petition and the same was dismissed vide order dated 22nd January 07 with the observation that the applicant is now fully aware of various orders which are passed for the recovery. Know the remedy is petitioner to apply for the recalling of the orders of assessment or by way of filing appeals against the assessment orders as petitioner may be legally advised. Hereafter applicants approached the adjudication authority for recalling of the order that request was rejected. The applicants again approached the Hon'ble

High Court and Hon'ble High Court dismissed the writ-petition vide order dated 31/08/07.

3. Thereafter applicants filed the present appeal. Contention of applicant is that the adjudication order were never served upon the applicants and they have come to know about the order only when the counter affidavit was filed by the revenue in the Hon'ble High Court. Therefore there is sufficient cause of not filing appeals within the period of limitation. Applicants also relied upon the decision of the Hon'ble Bombay High Court in the case of Pravin Mansukhlal Mehta vs. Union of India and Others reported in 1988 (34) E.L.T. 422 (Bom.) and the decisions of the Larger Bench of the Tribunal in the case of Margra Industries Ltd. vs. Commissioner of Customs, New Delhi reported in 2006 (202) E.L.T. 244 (Tri. - LB) in support of their claim. Contention of revenue is that the mode of service of adjudication order or summons as provided under 153 of Customs Act were followed by the revenue. The contention is that as per the provisions of Section 153, the order is to be served by tendering the order or sending it by registered post. In case, the order cannot be served in such a manner, the

service is by affixing the adjudication order in the Customs House. In the present case, the adjudication order was sent by registered post and the same has been received back with the postal remarks "*Bar Bar Talash Karne Par Pane Wala Nahin Milta*" as the revenue was unable to serve through registered post, thereafter the adjudication order was affixed on the office notice board of the Customs House, as per the provisions of Section 153B of Customs Act. The contention is that this fact is specifically mentioned in reply to writ-petition filed by the applicants and this fact is not disputed by the applicant before the Hon'ble High Court. In respect of the case laws relied upon the applicant, the contention is that the issue before the Larger Bench was whether mere tendering of the adjudication order with the post office is sufficient service on the assessee and that issue is not in the present case. In the case before the Hon'ble High Court, there was no dispute regarding the date of receipt of order. In such situation, the Hon'ble High Court held that the limitation starts from the date of receipt of order.

4. We find that impugned order was passed on 18/09/97 and appeals were filed on 3rd October 2007, the only

contention of applicant is that the adjudication order was never served upon the applicants and they had come to know any adjudication order during the recovery proceedings only. We find that in the reply filed by revenue in the writ-petition filed by the applicants, the revenue specifically mentioned that the order was sent through registered post, but the same could not served as the assessee was not available, thereafter as per the provisions of Section 153 of the Act, the adjudication order was affixed on the notice board of the Customs House. We find that as per the provisions of Section 153 of the Customs Act, the mode of service, if the revenue fails to serve in person or through post is by fixing on the notice board of the Customs House. This fact also mentioned in the reply to the writ-petition filed by the revenue. And this fact is not under dispute that the order was affixed on the notice board.

5. We find that the issue before the Larger Bench was only whether mere tendering of the adjudication order with the post office is sufficient service. Therefore, the ratio of the above decision is not applicable on the facts of present case. In the case before the Hon'ble High Court relied upon by

applicant there was no dispute regarding the date of service and in that situation Hon'ble High Court held that period of limitation starts from the date of service. In the present case, as adjudication order was affixed on the notice board of the Customs House, as per the provisions of Section 153 of Customs Act, therefore, we find no merit in the contention of the applicant regarding that they have shown sufficient cause for not filing the appeal before the Tribunal within the period of limitation. The COD applications are dismissed, consequentially the stay applications and appeals are also dismissed.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Dr. T.V. Sairam)
Member (Technical)

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