CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 23.10. 2017

**Excise RoA Nos. 50604 & 50607/2017 and**
**Ex. Appeal Nos. 52580 & 52706 of 2016**

(Arising out of order-in-original No. 30/2006-07 dated 30.03.2007 passed by the Commissioner of Central Excise, Delhi-II, New Delhi).

M/s Agarwal Plastic (India) Appellant
Rajeev Aggarwal

Vs.

CCE, Delhi-II Respondent

Appearance:

Sh. V. S. Negi, Advocate for the assessee
Sh. R. K. Mishra, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order Nos. 57397 – 57398/2017

Per: **Mr. Justice (Dr.) Satish Chandra**:

The present appeals are against order-in-original No. 30/06-07 dated 30.03.2007.

2. The appeals filed by the appellant are time barred about nine years. In the application for condonation of delay, it is mentioned that the order was not received by the appellant. Ld. Counsel for the appellant Sh. V.S. Negi submits that the copy of the order was received sometime in the year of 2016 and he was unable to tell the exact date. After nine years, on request, another copy of the

order was received and soon after receiving the certified copy of the order, the appeal was filed within the stipulated period of ninety days. Prior to it, he submits that it was the duty of the department to search the address of the assessee as the factory was closed. He admits that the appellant never informed the department about change of address after closing of the factory. Lastly, he submits that appeal may be decided on merit.

3. On the other hand, ld. AR Sh. R. K. Mishra for the Revenue submits that search was taken place at the business premises on 25.01.2003 and the order was passed in the year 2007. After issuing of the show cause notice and examination of the witnesses the impugned order was passed. Before the adjudicating authority, the assessee has also sought the inspection of the documents seized by the department. It is the submission of the ld. representative for the department that on 20.02.2002, the appellant sought the personal hearing.

4. After hearing both the sides and on perusal of the record, it appears that the factory was closed so, the notice cannot be served at the available address with the department. Ld. Counsel for the appellant has admitted that they never informed the department about the change of address. It is the submission of the ld. Counsel that to serve the notice, it was the duty of the Department to search new address.

5. It may be mentioned that a person cannot take advantage of his wrongs as per the maxim COMMODUM EX INJURIA SUA MEMO HABERE DEBET. Similar views were expressed in the case of ***Mrutunjay Puri vs. Narmada Bala Sasmel AIR 1961 SC 1353***.

6. In the instant case, considering the rival submissions, we are of the view that the assessee-appellant has never informed the department about the change of address. Earlier also appellant was not serious about the show cause notice. There is no proper explanation in the present case, so as per Section 5 of the Limitation Act, 1963, the delay of about nine years cannot be condoned. It may be mentioned that proper explanation is required as per the ratio laid down by the Apex Court in the case of ***Calcutta Municipal Corporation vs. Pawan Kumar Saraf, JT 1999 (1) SC 39.***

7. We are satisfied that the delay of nine years in the instant case is without proper explanation. So, the application for CoD is rejected by keeping in mind the ratio laid down by the Apex Court in ***Leelawanti vs. State of Haryana – AIR 2012 SC 515***; also in ***Oriental Traders Pvt. Ltd. vs. ITO – 312 ITR 193 (Bom***.). Accordingly, CoD is rejected. Consequently, appeals are not maintainable.

8. In the result, application for condonation of delay as well as the appeals are dismissed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant