IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:20.10.2017
Date of Decision:10.11.2017

Customs COD Application No.50203/2017 in and
Appeal No.50389/2017

[Arising out of Order-in-Original No.15/2004 dated 25.06.2004 passed by the Commissioner of Customs, ICD, TKD, New Delhi]

G & G Enterprises Appellants

Vs.

CC, New Delhi Respondent

**Appearance**:

Rep. by Shri Rajesh Rawal, Advocate for the appellant.
Rep. by Shri Govind Dixit, DR for the respondent.

**Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
**Hon'ble Mr. B. Ravichandran, Member (Technical)**

**Final Order No.57804/2017**

**Per B. Ravichandran:**

This misc. application is filed by the appellant/assessee for condonation of delay in filing of appeal. The order-in-original now under contest was issued by the Commissioner of Customs, ICD, Tughlakabad , New Delhi on 25.06.2004.Agaisnt this order, the appellant filed appeal in the Tribunal on 17.02.2017. The Registry raised objection on delay. The appellant filed this misc. application for condonation of delay.

2. In the misc. application, the applicant stated that they received certified copy of the said impugned order only on 17.01.2017 and the present appeal filed on 17.02.2017 is well within the time limit prrescirbed. The applicant also elaborated the background of the case to submit that though the proceedings were supposed to have being completed by the impugned order, they were not aware of the same. On

2.3.2010, they received a phone call from Superintendent, Recovery Section to pay the adjudicated dues . Thereafter, the applicant has been consistently following up with the jurisdictional Customs Authorities to get a copy of the order dated 25.06.2004. Finally, they could get a certified copy only on 17.01.2017 and thereafter they filed this appeal.

3. The case of the applicant is that they neither received the letter for personal hearing nor the final order. They had two business addresses, one at Panjabi Bagh and the other at Sadar Bazar. They have changed their address from Sadar Bazar to Punjabi Bagh and intimated the Department in September, 2003 itself. The Revenue did not take note of this change in address and continued to wrongly send the communications to the earlier address, which were reported to have been returned by the postal authorities.

4. Ld. Counsel elaborating the grounds of misc. application submitted that the applicant filed detailed affidavit on 16.03.2017 explaining facts and background. The Revenue have sent a letter on 8.12.2003 at the address of the appellant at Punjabi Bagh, intimating the personal hearing. For this, the appellant replied on 15.12.2003 seeking further time as their advocate was not available. These are recorded in the impugned order. As the Revenue is aware of the address of the appellant at Punjabi Bagh, the impugned order should have been dispatched to such address. Further, the ld. Counsel questioned the submission of the Revenue with reference to dispatch of the order on 28.06.2004 by speed post from Connaught Place, Post Office, New Delhi. The weight shown is only 20 gms., whereas the impugned order containing 10 pages could not have been sent in such envelope. Further, ld. Advocate also contested the claim of the Revenue that the

said order has been displayed in the notice board. He submitted that only after exhausting the requirements of Section 153 (a), the Adjudicating Authority can proceed with provisions of Section 153 (b). Further, there is no evidence of display in the notice board.

5. Ld. AR strongly contested the submissions of the applicant regarding non-compliance with the provisions of Section 153 by the Original Authority. He also submitted that the applicant did not exercise due diligence in pursuing the pending matter with Revenue. Admittedly, the appellants were having different addresses and there is no evidence to indicate that they have intimated the Department regarding change of address. The letter now produced is an un-signed print out with no evidence of service to the concerned officers. It is also submitted that a personal hearing notice was in fact received by the proprietor in his address at M-282, Guru Harkishan Nagar, Pashim Vihar, New Delhi-63.

6. Regarding the procedure to be followed under Section 153, ld. AR submitted that the Revenue has taken all the required steps in dispatching the order. Since the appellant did not make alternate arrangements to receive the letters and did not intimate the concerned office regarding change of address, they could not plead their case putting blame on the Revenue. Further, he also submitted that the jurisdictional Commissioner has submitted affidavit to the effect that the impugned order has been displayed in the Notice Board. Referring to the dispatch details in the impugned order, it is submitted that the impugned order has been put up on the notice board as per normal practice. The date of display etc. could not be submitted as the matter is more than 13 years old. He submitted that the appellants are trying to take advantage of lapse of many interesting years to contest the non-compliance

of the provisions of Section 153. He prayed for rejection of the application for condonation of delay as the same is without any merit.

6. We have heard both the sides and perused the appeal records.

7. The admitted facts of the case are that the order-in-original, contested in the present appeal, is dated 25.06.04. The appeal is filed on 17.02.2017, after a gap of more than 12 years and 7 months. The plea of the appellant is mainly on the ground that they did not receive the impugned order and change of address indicated was not duly followed up for dispatching the letter by Revenue. We are aware that the Tribunal has been exercising discretion, for recorded reasons, in allowing condonation of delay in filing appeals. As a general rule, these are granted liberally. This is mainly on the principle that the appellant should not be deprived of an appellate remedy and to get an order on merit only on the ground that there was a delay in preferring the appeal.

8. While this is general principle in law, in the present appeal where there is a delay of more than 12 years, it is necessary for us to examine the background and facts more carefully. It is to be noted that the appellant in the present case is an importer. Unlike the assessee for Central Excise and Service Tax, the importers are not required to register their address etc. with the Department. In other words, there is no registered address as an assessee with the department. The declarations made in the bill of entry and thereafter any correspondence will be considered by the officers for communicating with the importer in any proceedings. In the present case, the initial address of the appellant was apparently indicated as Sadar Bazar, Delhi. The appellants claimed that they have changed the address to Punjabi Bagh and intimated the Revenue. In support of the same, they produced an unsigned

print out showing a letter dated 15.09.2003 addressed to the Asstt. Commissioner , New Customs House, New Delhi. We have no corroboration except certain receipts issued by the postal authorities for one cover address to the Asstt. Commissioner of Customs, posted on 15.09.2003. When the Revenue contended that the impugned order was dispatched by speed post to the appellant in Sadar Bazar address, and certain support of postal receipts for speed post was produced, the appellant contested the same as uncorroborated due to various reasons. Admittedly, the same logic and reasoning will apply to the claim of the appellant with reference to filing of intimation of change of address. There is no concrete recorded proof of intimation of such change of address to the Revenue.

9. Regarding the contention of the appellant that prescribed method of service of order is registered post with acknowledgement due, we note that the impugned order sent to Sadar Bazar address was returned due to non-availability of the addressee, with an endorsement of the postal authorities. The position would have remained the same where the letter was dispatched by speed post or registered post, as the appellant was not available in Sadar Bazar address at that time. Hence, without going into the merits of the contention about mode of service, we note that the Revenue could not serve the order in the known address in absence of the appellant there.

10. The appellants also contested the plea on the display of the order in the notice board as not evidenced by the records. Admittedly, we are dealing with a 13 years old order. The impugned order itself clearly mentions about the copy to the Notice Board, ICD, Tughlakabad, New Delhi. The dispute is with actual reference to the display in the Notice Board. The appellant relied on the decision of the

Hon'ble Madras High Court in **K. Rama Rao 1983 (14) ELR 2267 (Madras).** We note in the said case, the Hon'ble High Court was dealing with the service of show cause notice with reference to provisions of Section 153 (b) of the Act. The High Court recorded that vague statement without giving requisite particulars have to be discarded. It was concluded that there was no mention of the date of display in the counter-affidavit filed by the Revenue and accordingly, the High Court concluded against the Revenue. In the present case, the dispatch of the impugned order to the known address of the appellant and its return have been evidenced and recorded in the written submissions of Revenue. The display in the Notice Board is evidenced in the impugned order, wherein copy was marked to the Notice Board also. While we note that the Revenue could not produce the details of the exact date of display, we also take note that we are dealing with 13 years'old case. Here, it is necessary to note that large number of communications in the form of notices, orders were sent to the various assessees by the Department. The standard legal requirements are generally adopted for dispatch of these letter by registered post or by speed post etc. The appellant in the present case pleaded that Revenue intentionally continued to dispatch the letters to Sadar Bazar address when they were aware that the appellants changed the address to Punjabi Bagh. We are not fully convinced with such assertion. We could not interfere any motive or intentional act by the Revenue in dispatch of the statutory orders. In fact, the import, which is subject matter of dispute, happened in 1997. The case was finally adjudicated in 2004. The appellant did file a written reply on 28.07.2003 through their Advocate. Thereafter, personal hearing was fixed on various occasions – 22.12.2003, 28.01.2004, 13.04.2004 and 26.05.2004. In fact, with reference to first personal hearing notice, the appellant vide their letter dated 15.12.2003 informed that their counsel was in USA and the next personal hearing may be fixed in the last week of Jan. 2004. The personal hearing was accordingly fixed. In fact, as already noted that even a letter was sent to the proprietor of the appellant firm in his Paschim Vihar address on 11.09.2003. For this a reply has been sent by the appellant stating that they have filed a reply to the show cause notice through their Advocate.

11. On careful consideration of the facts and circumstances of the case, as discussed above, we are not able to accept the submissions of the appellant that there is no delay in filing this appeal. It was further pleaded that in case there is a delay, the same may be condoned on the ground of reasons pleaded. The appeal has been filed after more than 12 years after issue of the impugned order. We are not convinced with the submissions made by the appellant for the reasons stated above. Accordingly, we hold that the misc. application is liable to be dismissed. Ordered accordingly. The appeal is also dismissed as not maintainable.

[Order pronounced on 10.11.2017]

( Justice Dr. Satish Chandra)
President

( B. Ravichandran )
Member (Technical)

Ckp.