IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Ex. Appeal No. 76934 of 2018

Arising out of Order-in-Appeal No.23/CE/RKL-GST/2018 dated 20.02.2018 passed by Commissioner (Appeals), GST, CX & Customs, Bhubaneswar.

M/s. IDL Explosives Ltd.
P. O. Sonaparbat, Rourkela,
Distt. Sundergarh-769016, Odisha **Appellant (s)**

VERSUS

Commr. of Central Excise & Service Tax, Rourkela
Rajaswa Vihar, Bhubaneswar-751007, Odisha

Respondent (s)

APPERANCE :

Shri S. C. Mohanty, Advocate for the Appellant
Shri K. Chowdhary, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)
ORDER NO.FO/76478/2019

Date of Hearing : 17.10.2019
Date of Decision : 17.10.2019

PER P. K. CHOUDHARY :

When the matter was called, the Ld. DR appearing on behalf of the Respondent Department submits that the issue in dispute is regarding the rejection of rebate claim in respect of duty paid on the exported goods.

2. He made the Bench go through Clause (b) of the First Proviso to Section 35B(1) which reads as under:-

> *"a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;"*

However, the period from the date of filing of the appeal before the Tribunal and upto the date of receipt of the Tribunal's Order ought to be excluded under Section 14 of the Limitation Act 1963 as has been held by the Hon'ble Supreme Court in the case of M. P. Steel

Corporation vs. CCE reported in 2017 (50) STR 205 (SC). Relevant paras are 7 and 41 and are reproduced for ready reference:-

> *Technically speaking, Shri A.K. Sanghi, may be correct. However, in an application for condonation of delay the appellant pointed out that they were pursuing a remedy before another Appellate Forum which ought to be excluded. We deem this averment sufficient for the appellant to contend that Section 14 of the Limitation Act or principles laid down under it would be attracted to the facts of this case.*
>
> *We might also point out that Conditions 1 to 4 mentioned in the Consolidated Engineering case have, in fact, been met by the appellant. It is clear that both the prior and subsequent proceedings are civil proceedings prosecuted by the same party. The prior proceeding had been prosecuted with due diligence and in good faith, as has been explained in Consolidated Engineering itself. These phrases only mean that the party who invokes Section 14 should not be guilty of negligence, lapse or inaction. Further, there should be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. On the facts of this case, as the earlier Supreme Court order dated 12-3-2003 itself points out, there was some confusion as to whether what was appealed against was the Superintendent's order or the Collector's order. The appellant bona fide believed that it was the Collector's order which was appealed against and hence an appeal to CEGAT would be maintainable. This contention, however, ran into rough weather in this Court. Further, the time taken between 3-4-1992 and 22-6-1992 to file an appeal cannot be said to be inordinately long. Thus, neither was there any negligence, lapse or inaction on facts nor did the appellant delay proceedings to harass the Department by pretending that there was a mistake. Condition (3) was also directly met - this Court in the order dated 12-3-2003 set aside CEGAT's order on the ground that it was without jurisdiction. It is indisputable that the earlier proceeding and the later proceeding relate to the same matter in issue and thus Condition 4 is also met. Condition 5, however, has not been met as both the proceedings are before a quasi-judicial Tribunal and not in a Court. This, however, is not fatal to the present proceeding as what is being held by us in this judgment is that despite the fact that Section 14 of the Limitation Act may not apply, yet the principles of Section 14 will get attracted to the facts of the present case. It is in this way that we now proceed to consider the law on the subject.*
>
> ***41.*** *The language of Section 14, construed in the light of the object for which the provision has been made, lends itself to such an interpretation.*

The object of Section 14 is that if its conditions are otherwise met, the plaintiff/applicant should be put in the same position as he was when he started an abortive proceeding. What is necessary is the absence of negligence or inaction. So long as the plaintiff or applicant is bona fide pursuing a legal remedy which turns out to be abortive, the time beginning from the date of the cause of action of an appellate proceeding is to be excluded if such Appellate proceeding is from an order in an original proceeding instituted without jurisdiction or which has not resulted in an order on the merits of the case. If this were not so, anomalous results would follow. Take the case of a plaintiff or applicant who has succeeded at the first stage of what turns out to be an abortive proceeding. Assume that, on a given state of facts, a defendant - appellant or other appellant takes six months more than the prescribed period for filing an appeal. The delay in filing the appeal is condoned. Under Explanation (b) of Section 14, the plaintiff or the applicant resisting such an appeal shall be deemed to be prosecuting a proceeding. If the six month period together with the original period for filing the appeal is not to be excluded under Section 14, the plaintiff/applicant would not get a hearing on merits for no fault of his, as he in the example given is not the appellant. Clearly therefore, in such a case, the entire period of nine months ought to be excluded. If this is so for an Appellate proceeding, it ought to be so for an original proceeding as well with this difference that the time already taken to file the original proceeding, i.e., the time prior to institution of the original proceeding cannot be excluded. Take a case where the limitation period for the original proceeding is six months. The plaintiff/applicant files such a proceeding on the ninetieth day, i.e., after three months are over. The said proceeding turns out to be abortive after it has gone through a chequered career in the appeal Courts. The same plaintiff/applicant now files a fresh proceeding before a Court of first instance having the necessary jurisdiction. So long as the said proceeding is filed within the remaining three month period, Section 14 will apply to exclude the entire time taken starting from the ninety first day till the final appeal is ultimately dismissed. This example also goes to show that the expression "the time during which the plaintiff has been prosecuting with due diligence another civil proceeding" needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice.

3. In view of the above discussions, the appellants are required to file a Revision Application before the Government of India which is the appropriate forum in respect of the issue/dispute in appeal.

4. This appeal is dismissed with an option to file Revision Application before the appropriate forum.

(Dictated and pronounced in the open court)

Sd/-

(P. K. Choudhary)
Member (Judicial)

Pooja