IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Appeal No. E/86405/2018

(Arising out Order-in-Appeal No. NGP/EXCUS/SSP/APPL/019-17-18 dated 28.02.2018 passed by the Commissioner of Central Excise (A), Nashik)

M/s. Kagaz Packaging — Appellant

Vs.

Commissioner of CGST & Central excise, Nashik — Respondent

Appearance:

Shri G.P. Pingle, Consultant for the appellant
Shri H.M. Dixit, AC (AR) for the respondent

CORAM:
Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

Date of hearing : 29.06.2018
Date of decision : 26.07.2018

O R D E R No: **A/86978 / 2018**

The appellant M/s Kagaz Packaging has brought this appeal against the order of the Commissioner(Appeals) in refusing to condone delay of 21 days in filing appeal before him and not going to the merit of the case concerning imposition of excise duty on packaging material used for export of foods along with interest and penalty awarded by the first adjudicating authority on the ground that appellant failed to produce rewarehousing certificate from the concerned authority against clearance of nil rate of duty under the cover of ARE-3.

2. Ld. Counsel for the appellant submitted that initially appeal was filed before the Commissioner (Appeals) but as it was filed in 21 days delay and no specific delay condonation was filed, appeal was dismissed against which appellant preferred an appeal before this Tribunal. In the earlier occasion, and vide order passed by this Tribunal in Order no. A/86728/16/SMB dated 14.03.2016 matter was remanded back to the Commissioner (Appeals) with a direction to give an opportunity to the appellant to examine the evidence of receipt of order-in-original and submit the reasons for delay. After such compliance, the appeal before the Commissioner (Appeals) was again dismissed on rejection of delay condonation petition on the ground that sufficient cause was not shown. The ld. Counsel further submitted that apart from scrutinisation of the order passed by the Commissioner (Appeals) concerning refusal to condone delay, the case can also be heard on merit on the basis of Board circular no. 579/16/2001 prescribing procedure in respect of removal of goods by the consignor and receipt of the goods by the consignee as well as procedure dealing warehousing certificate in which appellant being consignor, is required to obtain copy of AR3

duly signed by the consignee in proof of receipt of goods at his warehouse and get released from the obligation.

3. Ld. AR for the department on the other hand, supported the rationality of the order passed by the Commissioner (Appeals).

4. Heard both sides and perused the case records. It is found from the appeal memo and other documents available on record the initial appeal was preferred before the Commissioner (Appeals) holding the same to have been filed within the limitation period and the date of receipt of order-in-original was shown as 05.04.2010 while on enquiry made from the Nashik Commissionerate Division III by the Commissioner (Appeals), it was found untrue as the same order was dispatched by the Registered post AD on 04.03.2010 and the AD was received back on 15.03.2010. Holding 15.03.2010 to be the date of receipt of the order, the Commissioner therefore gave his finding rightly that the appeal was filed 21 days after the two months period fixed for filing of appeal against the order of first appellate authority. The Commissioner (Appeals) had also held that the appellant mis-stated deliberately the date of delivery of order. In the interim order passed by the Tribunal dated 22.08.2013 in order no. S/713/12/SMB/CIV, the Member(Technical) also did not find anything wrong in the

impugned order passed by the Commissioner. The matter was remitted back to the Commissioner (Appeals) only to provide an opportunity to the appellant to examine the evidence of receipt of order-in-original and the reason for delay (in the said order no. A/86728/16 SMB dated 14.03.2016). The second order of the Commissioner refusing to condone the delay also reveals that acknowledgement of receipt dates 09.03.2010 though in the first order he took the date of receipt as the date on which acknowledgement was received by the department. Therefore, if the actual data is to be taken as the date of receipt of order-in-original, it is delayed about a week over 21 days.

5. In the delay condonation petition, which the appellant stated before the Commissioner that some security personnel had received the order at the factory which is situated 20 kms. away from the office and the delay was to be attributed to such fact of receipt by it in the factory. Such a plea was not taken while filing the appeal before the Commissioner (Appeals) and it was suppressed before the Commissioner which he observed to be mis-statement but in reality, going by the ethical practice adopted by the appellant it would amount to fraud within the definition of IPC. It has been held in numerous judicial pronouncements of the Apex court, the leading case being reported in AIR

1994 SC 853, in the case of *S.P Chengalvaraya Naidu vs Jagannath* that a person whose case is based on false suit has no right to approach the Court. He can be summarily thrown out at any stage of litigation.

6. I find it proper to reproduce the relevant para of the said judgment.

> "The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

7. In Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550 it was held by the Hon'ble Supreme Court has follows:-

> "since fraud affects the solemnity irregularity and orderly based of the proceedings of the Court and also amounts to the abuse of the process of court, the court have been held to have an inherent power to set

> aside an order obtained by fraud practice upon that court. Similarly where the court is misled by the party or the court itself counts the mistake which prejudice the party the court as inherent power to recall its order."

8. Though the above pronouncements were held in respect of civil disputes, it has a bearing on the case in hand for the reason that initial period of about 28 days delay was suppressed by the appellant while preferring an appeal before the Commissioner (Appeals). The ground stated in the appeal memo that the order was sent to the factory office that was received by the security personnel is not a convincing ground in the sense that such important registered letter cannot be dealt in such casual manner and assigned to the security personnel to handle the same and it appears improbable that such letter would take more than 3 weeks to travel a distance of 20 km to reach its head office. Therefore no illegality or infirmity is found in the order of Commissioner (Appeals). Further the first adjudicating authority disallowed the claim of the appellant on the ground that it failed to produce proof before it regarding such despatch of Form ARE-1 to the Superintendent but the same does not appear to be a valid reason. In fact the liability of consignor would cease upon receipt of its copy from the consignor, still it cannot be

believed that the copies of such receipt annexed to the appeal memo were not anti-dated or subsequently manufactured in view of the conduct of the appellant noticed in suppressing the delay before the first adjudicating authority.

9. Appeals are dismissed and the order of the Commissioner (Appeals) is upheld.

(Pronounced in Court on 26.07.2018)

Dr. Suvendu Kumar Pati
Member (Judicial)

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