(1980) 07 GUJ CK 0013

In the Gujarat High Court

Case No : Special Civil Application No. 112 of 1978

A. Raman and Co. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 03-07-1980

Acts Referred:

Central Excise Rules, 1944 — Rule 10
Central Excises and Salt Act, 1944 — Section 35, 35A, 36

Citation : (1981) 8 ELT 592

Hon'ble Judges : M.P. Thakkar, J;A.N. Surti, J

Bench : Division Bench

Advocate : H.B. Shah, for the Appellant; V.P. Shah, for the Respondent

Judgement

A.N. Surti, J.—The petitioners M/s. A. Raman and Company, Cotton Mills, situated near S.T. Workshop, Naroda road, Ahmedabad, were aggrieved by the impugned orders passed by the Assistant Collector of Central Excise, Ahmedabad. The Appellate Collector, Central Excise, Bombay, and the Government of India, annexures ''C'', ''D'' and ''E'' respectively annexed to the main petition and have filed the present petition under article 226 of the Constitution of India.

2. A few relevant facts giving rise to the present petitions may be stated in brief. The petitioners are a partnership firm running a yarn manufacturing unit at Naroda in the city of Ahmedabad. In the year 1971, the petitioners had manufactured yarn of mixed fibres containing woollen yarn of staple waste and wool waste. The petitioners had also submitted returns for payment of excise duty leviable on the said products.

3. The Central Excise department raised a question with respect to the classification of the said product manufactured by the petitioners'' firm. In this behalf, the department had issued a show cause notice dated March 24, 1972, and claimed the difference between the special excise duty leviable on the said product which was levied through misconstruction and which was leviable to duty

leviable on the rayon and fibres under item No. 18A. The said notice was issued under rule 10 of the Central Excise Rules, 1944 and the same is at annexure ''A'' to the petition.

4. After the receipt of the said show cause notice, the petitioners replied to the show cause notice, and raised various contentions on the merits. The reply to the said show cause notice is at annexure ''B'' to the main petition.

5. The Assistant Collector of Central Excise, Ahmedabad did not accept the contentions raised by the petitioners in their reply to the show cause notice, and ultimately, took the view that the petitioners should pay to the Excise department a sum of Rs. 6318/- being the amount of basic duty, and a further sum of Rs. 2106/- being the amount of special excise duty under rule 10 of the Central Excise Rules, 1944. The Assistant Collector, Central Excise, Ahmedabad passed the said order on December 3, 1974.

6. After passing the said order being annexure ''C'' by the Assistant Collector of Central Excise, Ahmedabad the petitioners preferred an appeal to the Appellate Collector of Central Excise, Bombay. It may be stated at this stage, that the petitioners sent the papers concerning their appeal to the Appellate Collector, Central Excise, Bombay by post. The Appellate Collector, Bombay received the papers on April 8, 1975. Under the circumstances, the Appellate Collector, Bombay, took the view that the appeal preferred by the petitioners was barred u/s 35 of the Central Excises and Salt Act, 1944. It may be stated at this stage that in order to see that the appeal was preferred in time within prescribed period before the Appellate Collector, Central Excise, Bombay, the appeal should have been presented or the appeal memo should have reached to the Collector, Central Excise, Bombay by April 7, 1975 as provided in section 35 of the Central Excises and Salt Act, 1944. As the appeal memo did not reach the office of the Appellate Collector, Central Excise, Bombay by April 7, 1975, the Appellate Collector, Central Excise, Bombay dismissed the appeal filed by the petitioners u/s 35 of the aforesaid Act. It may be stated at this stage that the Appellate Collector, Bombay, did not decide the case on the merits of the matter.

7. The petitioners were again aggrieved by the order passed by the Appellate Collector, Bombay and preferred revision application, which was disposed of by the Joint Secretary to the Government of India, New Delhi. The Joint Secretary by his order dated June 10, 1977 agreed with the reasoning and the ultimate conclusion arrived at by the Appellate Collector, Central Excise, Bombay, and rejected the revision application filed by the petitioners.

8. It is under these circumstances that the present petition is filed under article 226 of the Constitution of India in this Court.

Section 35 of the Central Excises and Salt Act, 1944 provides as follows :

"35(1) Any person deeming himself aggrieved by any decision or order passed by a Central Excise officer under this Act or the rules made thereunder, not being an order passed u/s 35A, may, within three months from the date of such decision or order, appeal therefrom to the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963, or in such cases as the Central Government directs, to any Central Excise officer not inferior in rank to an Assistant Collector of Central Excise and empowered in that behalf by the Central Government. Such authority or officer may thereupon make such further inquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appeal against :

Provided that no such order-in-appeal shall have the effect or subjecting any person to any greater confiscation or penalty than has been adjudged against him in the original decision or order.

(2) Every order passed in appeal under this section shall, subject to the power of revision conferred by section 36, be final."

The plain reading of section 35 of the Act clearly shows that any party aggrieved by any decision or order passed by the Central Excise office can file an appeal under the Act or the rules made thereunder within a period of three months from the date of such decision or order. In the instant case, there was no dispute before us that the relevant papers concerning the appeal reached the office of the Appellate Collector, Central Excise, Bombay on April 8, 1975, that is to say, after the period of three months as the relevant appeal papers reached the office of the Appellate Collector, Bombay late by one day than the prescribed period of filing an appeal u/s 35 of the Act.

9. At the time of the hearing of the present petition, we requested Mr. Shah, the learned Advocate for the petitioners, to point out to us from the Act or the rules framed thereunder whether any power conferred on the Appellate Officer or whether there was any authority of law vested in him to condone the delay if the appeal was filed beyond the period of limitation as mentioned u/s 35 of the Act, but Mr. Shah very frankly stated at the bar, that there is no such power or authority of law vested in the Appellate Officer to condone delay, if the appeal is presented late, or if the relevant appeal papers reached late the office of the Appellate Collector, Central Excise, Bombay.

10. But Mr. Shah invited our attention to the reported decision of the Bombay High Court in Gangaram (Vivekananda Mills) v. Jeejebhoy, Labour Law Journal, 1955, Volume 2, 761. In the aforesaid decision the Bombay High Court had to consider Regulations 29 and 30 framed under the Bombay Industrial Relations Act, 1947 which are in the following terms :-

Reg. 29 "Every application, petition, appeal, written statement or statement of claim to be made to the court under the Act shall be filed in the office or sent to the Registrar by registered post."

Reg. 30. "The memorandum of appeal shall be filed within the period of limitation prescribed in S. 84(2) on working days, during the business hours specified in

Regs. 18 and 19."

On a consideration of the aforesaid regulations framed under the Bombay Industrial Relations Act, the Division Bench of the Bombay High Court took the view, that the post office was constituted as an agent of the court in which the appeal was to be preferred, and hence, even if the relevant papers concerning the appeal reached late before the Appellate Tribunal, the appeal should be treated as filed within the period prescribed by the law of limitation.

11. With respect, it is not possible for us to agree or accept Mr. Shah''s submission, that in the instant case, we should take the view that the post office was constituted as the agent of the Appellate Collector, as there is no such specific or implied provision of law either under the Act or the rules framed thereunder. Under the circumstances, the aforesaid reported decision of the Bombay High Court does not assist the petitioners in any manner whatsoever. It may be emphasised that section 35 of the Act does not provide for sending of appeals by post.

No other submission was made by Mr. Shah in course of the hearing of this petition.

12. As a result of the aforesaid discussion, we do not see any substance in the petition, and hence, the petition fails, and the rule is discharged, but, having regard to the facts and circumstances of the case, we make no order as to costs.

