

(1979) 06 KL CK 0002

In the High Court Of Kerala

Case No : Writ Appeal No. 46 of 1979

Assistant Collector of Central Excise and Others

APPELLANT

Vs

Ruby Rubber Works Ltd.

RESPONDENT

Date of Decision : 25-06-1979

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Section 12

Citation : AIR 1980 Ker 108 : (1980) CENCUS 149 : (1979) 4 ELT 651 : (1979) 2 ILR (Ker) 771

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : T.R.G. Warriar, for the Appellant; M. Pathrose Mathai and Joseph Vellappally, for the Respondent

Final Decision : Allowed

Judgement

Gopalan Nambiyar, C.J.—We cannot agree with the learned judge who allowed the respondent's writ petition and quashed Ext. P4 order and directed the Collector of Central Excise, Madras to consider and dispose of Ext. P3 appeal on the merits. By Ext. P2 order dated 15-12-73 the Assistant Collector of Central Excise, Kottayam, confirmed the demand for a sum of Rs. 57,190.34 raised against the respondent for having removed tread rubber without payment of the duty due. Against this order of the Assistant Collector, the statute provides an appeal to the Appellate Collector of Central Excise, Madras, which had to be filed within three months of the date of the order of the 1st authority. Ext. P3 appeal seems to have been wrongly addressed to the Appellate Collector of Central Excise, Cochin instead of to that authority at Madras, Presumably, for that reason, there is no controversy that the appeal was received by the Appellate Authority out of time, that is, after the three months' period within which the appeal had to be filed. It is also beyond dispute that what is material for the purpose of seeing whether the appeal was within time or not, is the date of

receipt of the Memorandum of Appeal and not the date of despatch of the same--vide F.N. Roy Vs. Collector of Customs, Calcutta, . As the appeal was received beyond time, it was rejected as time barred by Ext. P4 order. A revision u/s 36 of the Act proved unsuccessful and was dismissed by Ext. P5 order. It was to quash Exts. P2, P4 and P5 that the writ petition was filed in this Court. Objection was raised that as Ext. P2 order had been carried up in appeal and the appeal had been dismissed as having been filed out of time, it was not open to the respondent to canvass Ext. P2 order on its merits. The learned Judge in the course of his judgment stated that difficult questions had been raised in the appeal. The learned Judge seems to have been inclined to find fault with the appellant for not having produced the registered cover to show when the appeal was received by the Cochin Office, and when it was transmitted to Madras, and on what date it was received by the Collector at Madras. We think these were quite unnecessary and reflect a wrong approach, as there was no controversy before the authorities below, nor before the learned Judge, nor before us, that the appeal was received by the Appellate Collector at Madras beyond the period of three months within which it had to be lodged. It was then for the respondent to explain the delay in filing the appeal, and there was no burden on the appellant before us to produce the cover or otherwise to show the course of the appeal from the time when it was put in the course of transmission, to the date of actual receipt by the proper authority. The learned Judge has discussed various aspects which, with respect, appear to us TO be not relevant. On the short question as to whether the appeal had been received by the appellate authority in time or not, the learned Judge concluded thus :

"9. In view of the peculiar circumstances of this case, and the difficult questions raised relating to jurisdiction, I am of the view that an opportunity should be given to the petitioner to be heard by the appellate authority. Even assuming that the petitioner's appeal was ultimately received by the appellate authority outside the period of limitation, in view of the fact that, if the appeal had not been wrongly addressed, it would have, in all probability reached the appellate authority well within time, I am of the view that Ext. P3 appeal should be taken back on file by the appellate authority and disposed of on merits.

10. I set aside Ext P4 order of the 2nd respondent and direct him to consider Ext. P3 appeal and dispose of the same on merits. I should like to make it clear that none of my observations shall be taken to have touched the merits of the case in any manner whatever. The Original Petition is accordingly allowed. No costs."

We do not think that under Article 226 jurisdiction, the learned Judge was justified in setting aside Exts. P2, P4 and P5 orders. No grounds had been made out at all for the delay in filing the appeal before the appellate authority; nor was the learned Judge right in condoning the delay in filing the appeal in proceedings under Article 226, when the authorities below had, in the exercise of their discretion, refused to do so and had no opportunity to do so.

2. On almost similar facts a learned Judge of this Court, following a Division Bench of this Court in W. A. No. 417 of 1975, had dismissed the writ petition. In W. A. No. 417 of 1975 again, a Division Bench of this Court had taken the same view as we have stressed in the present case.

3. We allow this appeal and set aside the judgment of the learned Judge and direct that O. P. No. 4269 of 1975 will stand dismissed with no order as to costs.