

(1991) 05 CAL CK 0017
In the Calcutta High Court
Case No : C.O. No. 14139 (W) of 1990

Chandra and Sons (P) Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-05-1991

Acts Referred:

Customs Act, 1962 — Section 131

Gold (Control) Act, 1968 — Section 31, 55, 71(1), 71(2), 74

Limitation Act, 1963 — Section 5

Citation : (1992) 57 ELT 537

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Advocate : Pradip Ghosh, Apurba Lal Bose and U.A. Dewan, for the Appellant; S.K. Sengupta, for the Respondent

Judgement

Ruma Pal, J.—The petitioners have challenged an order passed by the Member - Judicial of the Customs, Excise & Gold Control Appellate Tribunal (hereinafter referred to as C.E.G.A.T.) dismissing the petitioners' application for condonation of delay in preferring an appeal.

2. The material facts are briefly as follows :

3. The petitioner-Company carries on business in gold. The petitioners sent some gold to a certified goldsmith for converting the same into ornaments. On the same date some Customs Officers raided the shop premises of the goldsmith" and seized various quantities of gold including the gold sent by the petitioners. Two show cause notices were issued by the Customs Authority. One was under the Gold (Control) Act, 1968 (hereinafter referred to as the 1968 Act) and the second was under the Customs Act, 1962 (hereinafter referred to as the 1962 Act). The petitioners replied to the said show cause notices. The adjudication proceedings were held by the Assistant Collector of Customs who passed the following order on 30th November, 1977:

"Having regard to the facts, circumstances and evidence as discussed above, I

confiscate the seized gold bar of foreign origin primary gold and other items i.e. items No. 2, 4 and 5 of the Search List u/s 71(1) & 71(2) of the Gold (Control) Act, 1968.

I also impose penalty of Rs. 500/- (Rupees five hundred only) each on M/s. Chandra & Sons (Pvt.) Ltd. and Shri Tarak Nath Chandra u/s 74 of the Gold Control Act, '68 as they contravened the provisions of Sections 8(1), 31 and 55 of the Gold Control Act, 1968.

I refrain from imposing any penalty on others under the Gold Control Act, 1968.

4. It is to be noted at this stage that penalty was imposed and confiscation was made under the 1968 Act. No action was taken under the 1962 Act.

5. The petitioners preferred appeals from the order dated 30-11-1977. The appeals were rejected by the Appellate Collector of Customs on 15-1-1979. The Appellate Order contained the following notes :

"N.B. (1) This is not appealable under the Customs Act, 1962 (52 of '62).

(2) (i) u/s 131 of the said Act, any person aggrieved by this order can prefer an application for revision to the Central Government within 6 months from the receipt of this order.

(ii) Any such application should be addressed to the Additional Joint Secretary (Revision application), Government of India, Ministry of Finance (Department of Revenue) Jeevan Deep Buildings, Parliament Street, New Delhi."

6. The petitioners accordingly filed a revision application u/s 131 of the 1962 Act from the order dated 15-1-1979 before the Revisional Authority. It is not disputed that the application was filed within time. In the revisional application the petitioners prayed for the following :

"(a) the instant petition be admitted.

(b) the records of adjudication and exhibits may be called for

(c) the hearing of the revision application be made at the Customs Office at Calcutta and pray further that

(d) the application be allowed upon hearing the revision applicants;

(e) seized property in entirety be ordered to be returned to the revision petitioners

(f) the entire amount of fine which has been paid by the two petitioners be remitted and order for the refund of the full amount to the petitioners herein be made".

7. By virtue of the Finance (No. 2) Act, 1980 the Customs, Excise and Gold Control Appellate Tribunal (CEGAT) was set up. All revisional applications/appeals from the decision of the Appellate Collector under the 1962 Act and 1968 Act

respectively were transferred to the Tribunal.

8. The Advocate of the petitioners then advised the petitioners that a separate appeal should have been filed from the Order dated 15-1-1979 under the 1968 Act. An appeal was accordingly filed under the 1968 Act on 15-11-1984. The petitioners prayed for condonation of the delay in preferring the appeal on the grounds (1) that they had been wrongly advised by their then Advocate (2) that they had been misled by the note appended to the order dated 15-1-1979. An affidavit of the petitioners' the then Advocate was also filed. In the affidavit the said Advocate stated that it was he who had advised the petitioners to file the revision application.

9. The judicial Member of CEGAT rejected the prayer for condonation of delay (and consequently the Appeal) on 25th June, 1990 on the following two grounds :

(1) The Revision application would show that: only contravention of the 1962 Act had been dealt with and that there was no grievance "about the order made against the appellant under the Gold (Control) Act."

(2) The case was taken up by the Tribunal in June 1984 and it was only in November, 1984 that the application for condonation was made.

10. The power to condone the delay in preferring the appeal under the 1968 Act is contained in Section 81(6) of the Act. In my view the learned Member of CEGAT did not address himself properly to the question involved nor did he consider the law on the subject.

11. As seen earlier the petitioners were held guilty in the original order only for a contravention of the 1968 Act and the action of confiscation and penalty was under the 1968 Act. In the revision petition the prayer was for a return of the goods confiscated and for refund of the fine. This could have reference only to the 1968 Act. To state therefore that no grievance had been made under the 1968 Act is manifestly wrong.

12. Secondly the facts constituting the offence under the 1962 Act and 1968 Act are identical. The petitioners had admittedly preferred the Revisional Application within time. Periods of limitation in preferring Appeals are fixed with a view to weed out the laggardly litigant. Such litigants as the petitioners cannot be said in the circumstances of this case to have been laggardly.

13. Thirdly, it is well established that mistaken legal advice can amount to sufficient cause.

14. In the case of Rajendm Bahadur v. Rajeshwar Bali [reported in AIR (1973) PC 276] the appellant preferred an appeal before the District Judge on the advice of his Counsel. The appeal was dismissed on the ground that the District Judge did not have the pecuniary jurisdiction to hear the appeal. The appellant then preferred an appeal to the Chief Court and prayed for condonation of delay. The Privy Council held that in the circumstances of the case the delay should be

condoned.

15. In 1955 a Division Bench of this Court in Kshetramoni Dasi Vs. Surendra Mohan Kundu and Others, held :

"It appears on the authorities that the view taken by the learned Judge is not correct. What the client has to prove in such cases is that in approaching a particular lawyer whom he had approached, he had acted bona fide and with reasonable care. If he proves so much, the onus lying upon him is discharged. If the lawyer, on being so approached, gives misleading advice and acting upon that advice the client allows the period of limitation to expire, he is entitled to rely upon such wrong advice as sufficient cause for the delay, provided always that his initial approach to the particular lawyer had been bona fide and the choice of the lawyer had not been careless or unreasonable."

16. In 1972 the Supreme Court in The State of West Bengal Vs. The Administrator, Howrah Municipality and Others, a held

"If a party had acted in a particular manner on a wrong advice given by his legal Adviser, he cannot be held guilty of negligence so as to disentitle the party to plead sufficient cause u/s 5 of the Limitation Act."

In an earlier part of the judgment the Supreme Court had held :

"From the above observation it is clear that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party."

17. In 1981 a Division Bench of this Court in Debabrata Mukherjee v. Kalyan Kumar Roy reported in (1981) 1 CHN 155 held :

"The courts have repeatedly recognised that when a client proves that he had acted bonafide and with reasonable care in approaching a particular lawyer who gives him wrong advice with the result that the period of limitation expired before any step was taken he is entitled to rely upon such advice as sufficient cause for the delay....

It is also the consistent view of the courts that sufficient cause in Section 5 of the Limitation Act would receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to the party....

We are not prepared to accept the submission that where the legal position is clear but the lawyer still makes a mistake, the same cannot be considered as a sufficient one. It may be regrettable that a particular lawyer entertained a wrong view about the prescribed period of limitation for appeals to this court from decrees and orders of the City Civil Court, but the same being a genuine one the litigant is not to be penalised for such mistake of his lawyer. In this connection, reference may be also made to the decision of the Supreme Court in Mata Din v. Narayan-AIR 1970 SC1523. We find the courts have generally condoned the

delay in such matters when the same was occasioned by a lawyer's mistake unless the same was made with an ulterior motive or to obtain an undue advantage or cause improper gain to his client."

In this case also there is no ground to disbelieve the affidavit of the petitioners" the then Advocate.

18. That the petitioner was aggrieved by the order dt. 15-1-1979 is beyond doubt. That the petitioner took steps within the time specified to challenge the order is also not disputed. In this case therefore no negligence or lack of bona fides can be imputed to the petitioners.

19. For the reasons aforesaid I set aside the order dated 25th June, 1990. The CEGAT is directed to reconsider the petitioners application for condonation of delay in the light of the observations contained in this judgment. The writ petition is disposed of accordingly. There will be no order as to costs.