

(2015) 03 AHC CK 0104

In the Allahabad High Court

Case No : Central Excise Appeal No. 773 of 2007

Garlon Polyfab Industries

APPELLANT

Vs

Commissioner Central Excise

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35C(2)

Citation : (2015) 4 ADJ 69 : (2015) 323 ELT 340

Hon'ble Judges : Sudhir Agarwal, J; Shashi Kant, J

Bench : Division Bench

Advocate : R.R. Agarwal, for the Appellant; B.K. Singh Raghuvanshi and S. Chopra, Advocates for the Respondent

Judgement

1. Heard learned counsel for parties. Only question up for consideration in this appeal is:

"Whether period of six months under Section 35C(2) of Central Excise Act, 1944 (hereinafter referred to as "Act, 1944"), commence from date of knowledge of order by assessee, whereas assessee proposed to avail remedy therein or not?"

2. In the present case short facts relevant and undisputed are that final order was passed on 24th February, 2004 and received by assessee on 27th February, 2004. Assessee claimed that said order was received by it on 19th July, 2004 and therefore rectification application filed by it on 26th October, 2004 was within period of limitation of six months" as provided in Section 35C(2) of Act, 1944.

3. Tribunal has rejected the said rectification application on the ground that period of six months will have to be counted from the date of order i.e. 24th February, 2004 and not from the date when it was served upon assessee.

4. We find that this issue has been considered by Apex Court in Collector of Central Excise, Madras Vs. M.M. Rubber and Co., Tamil Nadu, AIR 1991 SC 2141 : (1992) 37 ECC 16 : (1993) 49 ECR 177 : (1991) 36 ECR 305 : (1991) 55 ELT 289 : (1991) 3 JT 587 : (1991) 2 SCALE 473 : (1992) 1 SCC 471 Supp :

(1991) 3 SCR 862 : (1991) 2 UJ 658 . Court has found that the party who is effected by the order or decision, for seeking his remedies against the same, should be made aware of passing of such order. Therefore, limitation starts from the date on which the order was communicated to the party and not the date on which it was pronounced or published. Unless communicated, the party affected by it would have no occasion to avail further remedy. It must have a reasonable opportunity of knowing of passing of the order and its contents. In other words limitation shall be counted not from the date when order is signed or delivered but from the date it was served on the affected party. Court in Collector of Central Excise v. M.M. Rubber Co. (Supra), said as under:

"12. It may be seen therefore, that, if an authority is authorised to exercise a power or do an act affecting the rights of parties, he shall exercise that power within the period of limitation prescribed there for. The order or decision of such authority comes into force or becomes operative or becomes an effective order or decision on and from the date when it is signed by him. The date of such order or decision is the date on which the order or decision was passed or made: that is to say when he ceases to have any authority to tear it off and draft a different order and when he ceases to have any locus poenitentiae. Normally that happens when the order or decision is made public or notified in some form or when it can be said to have left his hand. The date of communication of the order to the party whose rights are affected is not the relevant date for purposes of determining whether the power has been exercised within the prescribed time.

13. So far as the party who is affected by the order or decision for seeking his remedies against the same, he should be made aware of passing of such order. Therefore, Courts have uniformly laid down as a rule of law that for seeking the remedy the limitation starts from the date on which the order was communicated to him or the date on which it was pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing of passing of the order and what it contains. The knowledge of the party affected by such a decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him. Otherwise the party affected by it will have no means of obeying the order or acting in conformity with it or of appealing against it or otherwise having it set. This is based upon, as observed by Rajamanner, CJ in Muthia Chettiar v. CIT (supra) "a salutary and just principal". The application of this rule so far as the aggrieved party is concerned is not dependent on the provisions of the particular statute, but it is so under the general law.

14.

17. Thus if the intention and design of the statutory provision was to protect the interest of the person adversely affected, by providing a remedy against the order or decision any period of limitation prescribed with reference to invoking such remedy shall be read as commencing from the date of communication of the order. But if it is a limitation for a competent authority to make an order the

date of exercise of that power and in the case of exercise of suo motu power over the subordinate authorities" orders, the date on which such power was exercised by making an order are the relevant dates for determining the limitation. The ratio of this distinction may also be founded on the principle that the Government is bound by the proceedings of its officers but persons affected are not concluded by the decision."

(emphasis added)

5. The aforesaid decision make things very clear. Where an order is delivered and signed, and if same authority has to exercise power of rectification, modification, correction etc. suo moto, limitation would commence from the date of signing and delivery of the said order and not when it is communicated to other side. Reason is that, knowledge of order by authority concerned can easily be attributed on the date when order is signed and delivered by it. But the same thing would not apply when a similar exercise i.e. review, modification, rectification etc. has to be availed by other side i.e. party concerned. That party can only avail such remedy when it is made aware of the order. Therefore, for the purpose of computation of commencement of period of limitation, when the remedy has to be availed by a party, it is the date on which order is communicated to it and not the date on which order is signed or delivered, unless, it can be shown that date on which order was signed and delivered, party concerned was present in the Court and had due knowledge thereof, and therefore, limitation should commence therefrom. Even in that case, it becomes the date of communication of order and not the date of mere passing of order. The Tribunal in the case in hand, in taking a view otherwise, has erred in law and failed to consider this distinction.

6. In view thereof, aforesaid question is answered in favour of appellant. Order of Tribunal is accordingly set aside.

7. Appeal is allowed with costs. Matter is remanded to Tribunal to pass fresh order in the light of observations made above.