(2009) 03 GUJ CK 0081

In the Gujarat High Court

Case No : Special Civil Application No. 2507 of 2009

Hardeep Synthetic Mills Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 20-03-2009

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35
Constitution of India, 1950 — Article 226

Citation : (2011) 21 STR 337

Hon'ble Judges : S.R. Bhrahmbhatt, J;D.A. Mehta, J

Bench : Division Bench

Advocate : D.V. Parikh, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

D.A. Mehta, J.—This petition challenges order dated 31-1-2006 made by the adjudicating authority, against which an appeal came to be filed belatedly before Commissioner (Appeals). Commissioner (Appeals) did not condone the delay as, by virtue of provisions of Section 35 of the Central Excise Act, 1944 (the Act), the appellate authority does not have powers to entertain an appeal beyond the statutory period of 90 (ninety) days (60+30). The Petitioner carried the matter in appeal before Tribunal but the Tribunal refused to intervene vide order dated 7-3-2008.

2. Learned advocate for the Petitioners has invited attention to the impugned order made by the adjudicating authority as well as the notifications dated 25-3-2003 and 30-4-2003 appearing at Annexure-A and Annexure-C as well as copy of declaration dated 4-4-2003. It was submitted that the duty assessed resulted in gross injustice to the Petitioners as the adjudicating authority had not considered the import of subsequent notification dated 30-4-2003. In support of the submissions made, reliance has been placed on the following Paragraph No. 19 of judgment of this Court in case of D.R. Industries Ltd. and Another Vs. Union of India (UOI) and Others,

19. As regards the contention that there may be extra-ordinary cases where Assessees may not be in a position to challenge the order of the adjudicating authority before the Commissioner (Appeals) within a period of 90 days from the date of communication of the order, we are of the view that Also reported in 2009 (240) E.L.T. 178 (Guj.). in such extraordinary cases where an Assessee can show extra ordinary circumstances explaining the delay and also gross injustice done by the adjudicating authority, the Assessee may invoke the writ jurisdiction of this Court. Hence, in cases where the Assessees have suffered gross injustice and they could not file appeals before the Commissioner (Appeals) within a period of 90 days from the date of communication of the order-in-original on account of circumstances beyond their control, such Assessees can invoke the powers of this Court under Article 226 of the Constitution but, of course, not as a matter of right.

It was submitted that in a case where gross injustice has resulted it is open to an Assessee to invoke powers of the High Court under Article 226 of the Constitution of India.

3. As can be seen from the aforesaid observations made by this Court, which are in the nature of exception, after holding that provisions of Section 35 of the Act are constitutionally valid and if legislature has provided for limitation period of 60 days for filing an appeal before Commissioner (Appeals) along with power of condonation of delay vested in the said appellate authority for a period of 30 days after the expiry of the statutory period of 60 days, the provisions cannot be termed to be arbitrary or bad in law or violative of any law, the Court has stated that the jurisdiction available to the High Court under Article 226 of the Constitution can be invoked by a person in a case where there are extraordinary circumstances explaining the delay which, if not condoned, would result in gross injustice.

4. The aforesaid observations in Paragraph No. 19 of the judgment cannot be read to mean that the Court first examines the merits of the matter and then proceeds to decide the matter without there being any extraordinary circumstances to explain the delay. In fact no Court or Forum is entitled to enter into merits of a controversy without the delay being condoned in the first instance in accordance with law. The powers of the Court under Article 226 of the Constitution thus cannot be read to mean that without considering whether the delay is explained or not the Court would enter into merits of the controversy.

5. If the facts of the case are examined, as can be seen from order of Commissioner (Appeals) dated 8-3-2007 the impugned order made by the adjudicating authority dated 31-1-2006 was received by an employee of the Petitioner-Company on 7-2-2006 and the appeal was actually presented only on 7-2-2007. Commissioner (Appeals) has further observed that the application seeking condonation of delay does not make out any case for condoning the delay. It is the aforesaid order of Commissioner (Appeals) which has been confirmed by the Tribunal.

6. In the aforesaid fact situation, in light of the ratio of the decision of this Court in the case of D.R. Industries Ltd. v. Union of India (supra), both, Commissioner (Appeals) and the Tribunal, were right in law in not condoning the delay in absence of any statutory powers available to the appellate authority. No extraordinary circumstances are pointed out so as to enable the Court to condone the delay.

7. The petition is accordingly rejected summarily.

