
(2014) 03 GAU CK 0077
In the Gauhati High Court
Case No : C. Ex. Appl. No. 2 of 2014

Hindustan Unilever Ltd.

APPELLANT

Vs

Commissioner of C. Ex., Dibrugarh

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G
Limitation Act, 1963 — Section 5

Citation : (2015) 315 ELT 398

Hon'ble Judges : Abhay Manohar Sapre, C.J.; Arup Kumar Goswami, J

Bench : Division Bench

Advocate : A. Chetia, Advocates for the Appellant; R. Dubey, Standing Counsel, Advocates for the Respondent

Judgement

Abhay Manohar Sapre, C.J.—Heard Mr. A Chetia, learned counsel for the appellant. Also heard Mr. R. Dubey, learned Standing Counsel, Central Excise for the respondent. This is an appeal filed by the appellant (assessee) under Section 35G of the Central Excise Act, 1944 against the impugned Order No. M-35/A-87/KOL/2013, dated 26-3-2013 passed by the Customs, Excise & Service Tax Appellate Tribunal (for short hereinafter called "the Tribunal") in Excise Appeal No. E/198/2010.

2. By the order impugned, the Tribunal dismissed the appeal filed by the appellant on the ground of limitation. Since the appeal was dismissed on the ground of limitation, the Tribunal did not examine the issue involved in the appeal on merits.

3. So the short question that arises in this appeal is whether the Tribunal was justified in dismissing the appeal on the ground of limitation?

4. It is apposite to reproduce the entire order passed by the Tribunal in verbatim infra;

"26-3-2013

1. This is an application filed by the applicant seeking condonation of delay of 95 days. On the earlier occasion i.e. on 7-11-2012, the Applicants were directed to file a detailed Affidavit explaining the delay.

2. The Id. Authorised Representative for the Applicant has submitted an Affidavit today.

3. We have gone through the Application as well as the Affidavit. We find that there has been neither detailed explanation on the delay enclosing the date chart, nor any material in support of the reason for the delay. On the contrary, the said Application is vague.

4. In these circumstances, we do not find any merit in the Miscellaneous Application for condonation of delay in filing the present Appeal. Consequently, the Miscellaneous Application is dismissed. Accordingly, the Appeal is also dismissed.

(Dictated and pronounced in the open Court)."

5. At the outset, we consider it appropriate to remind ourselves of the classic observations made by learned Judge Viviah Bose, J. in the case reported in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, . In his distinctive style of writing, the learned Judge speaking for the Bench held:

"(c) Interpretation of statutes - Code of procedure - Opportunity to be heard - (Civil) P.C. (1908), Pre. - ILR (1945) Kar 1, Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, and ILR (1951) 1 Raj 311, Sewa Ram Vs. Misrimal and Others, , Overruled.

A Code of procedure must be regarded as such. It is procedure something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the further laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

6. Keeping in view the aforesaid observation in mind, when we examine the fact of this case, we are of the considered opinion that the Tribunal should have condoned the delay in filing the appeal rather than to dismiss it on the ground of limitation. It is apart from the fact that the delay was hardly of 95 days and secondly: now the ground, which the appellant has stated in the present appeal,

persuade us to condone the delay by holding that it constitutes sufficient cause within the meaning of Section 5 of the Limitation Act. Condoning the delay always advances cause of justice and afford opportunity to parties to contest the case on merits whereas not condoning the delay results in denial of justice and deprive them of an opportunity. By this expression, we do not want to say that in every case delay should always be condoned, but by and large, approach of the court should be so technical, but it should be always to ensure that substantial justice is done by giving them an opportunity of being heard to both the parties.

7. Having regard to the nature of the controversy, the grounds taken in the appeal herein explaining the cause which resulted in delay in filing the appeal and further keeping in view the observations made by the Supreme Court in Sangram Singh (supra), we feel that the delay in the present case before the Tribunal should have been condoned. Since the Tribunal did not condone the delay, we, on our own, condone the delay and hold that the appeal before the Tribunal was within the time.

8. Accordingly and in the light of the foregoing discussion, the appeal succeeds and it is hereby allowed. The impugned order is set aside and the appeal filed by the appellant before the Tribunal is held to be within the time.

9. The Tribunal is directed to hear the appeal on merits, in accordance with law, after affording opportunity of hearing to all the parties concerned.

10. The parties are directed to appear before the Tribunal on 7-4-2014 and produce a copy of this order to enable the Tribunal to decide the appeal on merits, as directed. No costs.