

(1999) 12 GUJ CK 0042

In the Gujarat High Court

Case No : Special Civil Application No. 9682 of 1999

Jagrut Textiles

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-12-1999

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35(1)
Constitution of India, 1950 — Article 226, 227

Citation : (1999) 12 GUJ CK 0042

Hon'ble Judges : J.N. Bhatt, J;D.C. Srivastava, J

Bench : Division Bench

Advocate : Paresh M. Dave, for the Appellant; Akshay H. Mehta, for the Respondent

Judgement

1. Rule. The service of rule is waived by Mr. Akshay Mehta, learned Senior Standing Counsel for the Central Government.

2. Heard. The only point which is advanced before us in this petition is, about the mistake in typographical version leading into delay of 13 days in filing the Appeal before the Respondent No. 2, and in absence of any application for condonation of delay, the Appeal came to be dismissed on the ground of Appeal having been filed beyond the period of limitation. It appears also that the Appellate Authority has observed that the petitioner herein, Appellant before the Authority, had wrongly claimed the date of receipt of O.I.O. on 6.11.1998 and thereby tried to mislead the Department. It is also found from the impugned order that the Appellate Authority noticed, the delay of 13 days, is gross delay due to negligence on the part of the appellant, petitioner herein, and instead of pleading for condonation of delay the petitioner tried to hide the actual date of receipt of order in original. That is how treating the Appeal as time barred u/s 35(1)(i) of the Central Excise Act, 1944, without going into merit of the case it came to be dismissed on 29.9.1998, and hence this petition under Article 226/227 of the Constitution of India.

3. It is true that there was delay of 13 days in filing the Appeal before the respondent No. 2, instead of filing of application for condonation of delay, the date of receipt of the order in original was shown in such a way which was misleading the department. The contention raised on behalf of the petitioner in the petition before us is that it was mistake and the mistake should not come in the way of justice being done on merit. In other words, since the Appeal is not heard on merits, the opportunity for application for condonation of delay is sought, so that the substantial justice may not be sacrificed on the alter of processual law.

4. After having considered the peculiar facts and special circumstances and having heard the learned Advocate for the petitioner and learned Standing Counsel for the Central Government Mr. Mehta, and the fact that the matter has not been adjudicated upon by the Appellate Authority upon merit as it has been dismissed only on technical ground of non filing of Application for condonation of delay indicating sufficient cause, in our opinion, the ends of justice will be satisfied if the petitioners are directed to deposit the full amount i.e. demand and penalty, within a period of two weeks from today and to make an application for condonation of delay, which obviously, the Authority, the respondent No. 2, shall have to consider on merit, in accordance with law.

5. In the circumstances, only for the limited purpose, without entering into any other aspect or merit, the impugned order of Appeal is quashed and set aside upon a specific condition that the petitioner shall deposit full amount with penalty as demanded, within a period of two weeks from today and it will be open for the petitioner to move the Appellate Authority, the respondent No. 2 herein, for filing an application for condonation of delay and it will be open for the Appellate Authority to consider it on merits, in accordance with law.

6. With these observations, this petition stand partly allowed, while quashing the impugned order of Appellate Authority recorded on technical plea of delay. If the delay condonation application is not filed within a period of three weeks from today and that too after depositing the amount as stated hereinbefore the impugned order shall stand revived. No order as to costs. By way of abandon precaution parting thought may be necessary. We make it clear that the Appellate Authority, the respondent No. 2, shall decide the merit of the application for delay condonation uninfluenced by any of our obsrvation made hereinbefore.

Rule made absolute to that extent. No order as to costs.