(2014) 01 AHC CK 0119

In the Allahabad High Court

Case No : Central Excise Appeal No. 11 of 2014

Jai Kishan Khatri — APPELLANT

Vs

Commissioner of Central Excise, Kanpur Nagar — RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35(1) 37C

Citation : (2014) 305 ELT 385 : (2014) 43 GST 525 : (2014) 25 GSTR 16

Hon'ble Judges : Dhananjaya Yeshwant Chandrachud, C.J;Dilip Gupta, J

Bench : Division Bench

Advocate : Pankaj Bhatia and Gopal Verma, for the Appellant; Vinod Kant, for the Respondent

Judgement

1. This appeal is by a Director of Raj Ratan Industry Limited who is aggrieved by the dismissal of a rectification application by the judgment of the Tribunal dated 21 June 2013. The Tribunal, by a common order, dismissed both the rectification applications filed by the Company and the Director, who is the appellant in the present appeal. By the judgment delivered by this Court today in Central Excise Appeal Defective No. 2 of 2014, the appeal filed by the Company has been dismissed. The order of adjudication that was passed by the Joint Commissioner of Central Excise, Kanpur on 31 December 2008 was served on Vijay Agarwal, who was admittedly an employee of the Company, on 26 February 2009. The appeal before the Commissioner (Appeals) was filed on 17 December 2009 after a delay of 233 days and was dismissed on the ground that the Appellate Authority had no power to condone the delay in excess of a period of thirty days mentioned in the proviso to Section 35(1) of the Central Excise Act, 1944. The Tribunal affirmed that decision in its order dated 7 February 2012. Two appeals were filed before this Court, one by the Company and another by the appellant, who was its Director. Both the appeals were disposed of by permitting the Company and the Director to file rectification applications since it was submitted that Vijay Agarwal, who had received a copy of the order of the adjudication, was not an authorised representative within the meaning of Section 37C. The Tribunal

dealt with both the rectification applications while dismissing them by a common order dated 21 June 2013.

2. In the companion appeal which was filed by the assessee-company, this Court has confirmed the order of the Tribunal and has held that Vijay Agarwal was in fact an authorised representative of the Company. In the present case, which is an appeal by the Director, it has been urged that the Adjudicating Officer has imposed a personal penalty of Rs. 5 lacs on the appellant as Director of the Company. It has been urged that Vijay Agarwal, even though he may have been an authorised representative of the Company being an employee of the Company, was not authorised to receive a copy of the order on behalf of the appellant.

3. We find from the records that this submission has not been considered by the Tribunal though it was specifically raised in paragraph 3 of the rectification application filed by the appellant. In this regard, reliance has placed on a judgment of a Division Bench of this Court in R.K. Agarwal v. CESTAT 2008 (221) ELT 486 in support of the submission that an authorised signatory who has received an adjudication order on behalf of the Company, which is an assessee, may not necessarily be an authorised signatory to receive a copy of the order on behalf of the Director. Since this aspect has not been considered in the order of the Tribunal, we are of the view that the appropriate course of action would be to set aside the impugned order of the Tribunal only in so far as it relates to the appellant. We clarify, by way of abundant caution, that the present order will not affect the order of the Tribunal on the rectification application in relation to the assessee-company against which an appeal has been dismissed by an order passed separately today.

4. For the aforesaid reasons, we set aside the impugned order of the Tribunal dated 21 June 2013 in so far as it relates to the appellant and restore the rectification application for consideration afresh by the Tribunal. The Central Excise Appeal is, accordingly, disposed of. There shall be no order as to costs.

