(2021) 07 CESTAT CK 0026

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 40081 Of 2020

Jang Bahadur Singh Gujral APPELLANT

Vs

Commissioner Of Customs RESPONDENT

Date of Decision : 14-07-2021

Acts Referred:
Customs Act, 1962 — Section 28, 128, 153

Citation : (2021) 07 CESTAT CK 0026

Hon'ble Judges : Sulekha Beevi C.S, J

Bench : Single Bench

Advocate : P. A. Augustian, Sridevi Taritla

Final Decision : Allowed

Judgement

1. The appellant is aggrieved by the rejection of appeal by the Commissioner (Appeals) on the ground of limitation.

2.1 On behalf of the appellant, Ld. Advocate Shri P.A. Augustian appeared and argued the matter. He submitted that appellant was issued a show

cause notice on 19.08.2013 with regard to import of vehicle made in 2008. Personal hearing was granted by the adjudicating authority in response to

which the appellant had appeared before the adjudicating authority and filed written submissions also. The matter also involved the issue as to whether

DRI has powers to issue show cause notice. On this issue, a decision was passed by the Honâ??ble Supreme Court in the case of CC Vs Sayed Ali

- 2011 (265) ELT 17 (SC). The Delhi High Court in the case of Mangali Impex Ltd. Vs Union of India â?" 2016 (335) ELT 605 (Del.) is another

decision. Pursuant to this and other decisions there were directions by department to keep such matters pending in call book. The appellants did not

further receive any intimation from adjudicating authority after the personal hearing. Thereafter, appellant received a letter on 28.12.2018 stating that

Order-in-Original has been passed on 22.06.2016 which was dispatched on 12.07.2016 and that the appellant has to pay arrears as per the OIO. The

copy of the OIO was also enclosed along with this letter. Immediately, the appellant made arrangements to file appeal before the Commissioner

(Appeals), Chennai. The Ld. Commissioner (Appeals) has dismissed the appeal by observing that OIO has been dispatched to the appellant on

12.07.2016 and therefore the appeal filed is beyond time prescribed under law. The appellants were also issued several show cause notices by various

other Commissionerates in which the appellant had entered into appearance and participated in the proceedings. Appellant also filed appeals against

the orders passed by the adjudicating authority within time. There was no latches on the part of the appellant to file appeals in these other show cause

notices.

2.2 It is submitted by Ld. Counsel that appellants were not aware of the Order-in-Original passed by the adjudicating authority. They came to know of

the same only when the department issued their letter dt. 28.12.2018 demanding the arrears as per the order. Ld. Counsel relied upon the following

decisions in support of his argument :

(i) V3 International Vs CC (Appeals) 2018 (362) ELT 402 (All.) wherein it was held that even if order is sent by registered post, the

presumption which arises is a rebuttal one.

(ii) Honâ??ble Supreme Court judgment in the case of Saral Wire Craft Pvt. Ltd. Vs CC & ST â?" 2015 (322) ELT 192 (SC), wherein the

meaning of â??service of the orderâ?? was discussed.

3. Ld. A.R Ms. Sridevi Taritla appeared and argued for the department. She strongly opposed the grounds raised by the Ld. Counsel for appellant and

adverted to page 6 & 7 of the impugned order. It is submitted by her that as per the dispatch register maintained by the department, the Order-in-

Original was dispatched to the address of the appellant on 12.07.2016. As per Section 153 of Customs Act, 1962 the order has been sufficiently

served on the appellant and therefore the plea of the appellant that they did not receive the order is factually wrong. It is also argued by her that when

the order is sent by registered post it is to be presumed that the same is served on the addressee. She contended that Commissioner (Appeals) has rightly applied the law and dismissed the appeal on the ground of limitation.

4. Heard both sides.

5. The appellant is aggrieved by the rejection of the appeal on the ground of being time-barred. From the facts, it is seen that the order-in-original was

passed on 22.06.2016. From the dispatch register maintained by department, it is seen that the OIO was dispatched on 12.07.2016. However, there is

no supporting evidence to show that the order has been served / communicated on the addressee. Dispatching a letter/consignment by registered post

would raise a presumption that it is served upon the assessee. Such presumption is a rebuttal one. In the present case, the appellant has contended that

they have not received the Order-in-Original. Then, the burden is on the department to establish that the order was communicated / served on the

appellant. The contention of the department that since the Order-in-Original is issued by registered post, it is deemed that the appellant has been

served with the Order-in-Original cannot be accepted unless there is sufficient proof to establish the same. The word used in section 128 as well as

153 is communication of the decision, summons and notices. By merely sending a copy of the Order in Original by registered / speed post, the

department cannot wash of their hands when they are duty bound to serve the same on the appellant. The department ought to have tracked the

consignment and made sure that it has been delivered to the addressee. They can obtain a copy of the same from the website after tracking the

consignment and keep the same in the file in the same manner they maintain dispatch register. This would be useful to prove that the Order in Original

is served upon the addressee. The decision cited by the ld. Counsel also supports the case of the appellant.

6. It is also pertinent to note that in the present case, on merits, the issue also involves whether DRI has powers to issue show cause notice or not.

There were many litigations pending before various courts with regard to the said judgment. The Honâ??ble High Court of Delhi in the case of

Mangali Impex Ltd. Vs UOI â?" 2016 (335) ELT 605 (Del.) had held that DRI has no powers to issue show cause notices. There were appeals filed

by Union of India against this judgment before Honâ??ble Supreme Court which were admitted and stay of operation of the judgment of Honâ??ble

High Court Delhi (supra) had been granted by the Apex Court.

7. Prior to this, there is decision of Honâ??ble Supreme Court in the case of Commissioner of Customs Vs Sayed Ali - 2011 (265) ELT 17 (SC)

holding that Customs officer assigned with specific junctions of assessment and re-assessment in jurisdictional area where goods imported, competent

to issue show cause notice under Section 28 of Customs Act, 1962 as â??proper officerâ??. Notifications appointing Collector of Customs

(Preventive) to be Collector of Customs for Bombay, Thane and Kolaba Districts not ipso facto confer jurisdiction on him to exercise power entrusted

to â??proper officersâ?? under Section 28 ibid. Collector of Customs (Preventive) not being proper officer, not competent to issue SCN.

8. The matters relating to power of DRI officers to issue SCN were taken up before the Honâ??ble Supreme Court and many of the adjudication of

the cases were kept in abeyance. Taking note of all these facts, I am convinced that appellant has put forward sufficient reason to establish that they

were not aware of the adjudication order passed by the original authority and that they were not served with the adjudication order, as contended by

department.

9. From the discussions made above, I hold that the appellant has to be given a chance to contest the case on merits. The impugned order passed by

the commissioner (Appeals) holding that the appeal filed is time barred is set aside. The matter is remanded to the Commissioner (Appeals) who shall

consider the same on merits. The appeal is allowed by way of remand in the above terms.

(Dictated and Pronounced in open Court)