
(2000) 06 MAD CK 0011

In the Madras High Court

Case No : Writ Petition No. 12055 of 1993 and W.M.P. No. 18361 of 1993

Mohan Breweries and Distilleries Ltd.

APPELLANT

Vs

Collr. of Cus. (Appls.)

RESPONDENT

Date of Decision : 23-06-2000

Acts Referred:

Customs Act, 1962 — Section 128, 128(1)

Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 — Rule 6, 6(1), 6(2)

Citation : (2000) 121 ELT 584

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Mohan Parasaran, for the Appellant; S. Udayakumar, ACGSC, for the Respondent

Judgement

P. Sathasivam, J.—Aggrieved by the proceedings of the first respondent dated 24-8-1992 rejecting the appeal of the petitioner as time-

barred, the petitioner has filed the above writ petition.

2. The case of the petitioner is briefly stated hereunder :- The petitioner is a company incorporated under the Companies Act, 1956 and it has

registered office at Madras-2. The petitioner is carrying on business in the manufacture of Beer and Indian Made Foreign Liquor. The petitioner

had imported a fully automatic labelling machine from West Germany. In respect of the said automatic labelling machine, the petitioner had claimed

classification of the machinery imported under Customs Tariff sub-heading 8422.30 and also claimed exemption under the above Tariff heading

read with Customs Exemption Notification No. 125/86 dated 17-2-1986 as amended. However, the second respondent rejected the claim of the

petitioner. Aggrieved by the order of the second respondent, the petitioner filed

W.P. No. 17377 of 91 before this Court for the limited purpose of securing the release of the labelling machine. This Court by order dated 20-1-1992 following the earlier orders passed in similar matters, directed that the labelling machine should be released on the petitioner paying the admitted duty and one third of the differential duty in cash, 1/6th of the differential duty by furnishing bank guarantee and for the remaining on the petitioner furnishing a personal bond. Pursuant to the said order, the machine was released. It is further stated that since the concerned file had been mis-placed in their office and was traced out only in the third week of April, 1992, the petitioner had sent its appeal to the first respondent by certificate of posting on 2-5-1992. The petitioner also sought for condonation of delay in preferring the appeal. However, it appears that the appeal papers were received in the office of the first respondent only on 25-5-1992, i.e., after the expiry of 6 months from the date of the impugned order passed by the second respondent. The appeal was rejected by the first respondent on the ground that they have no power to condone delay since the appeal was presented after the expiry of six months.

3. Heard the learned Counsel for the petitioner as well as learned Additional Central Government Standing Counsel.

4. Mr. Mohan Parasaran, learned Counsel appearing for the petitioner, after taking me through the relevant provisions from the Customs Act, would contend that inasmuch as the appeal was sent within a period of six months, the first respondent-appellate authority ought to have entertained the appeal and disposed of the same on merits. He further contended that since the petitioner had sent its appeal to the first respondent by certificate of posting on 2-5-1992 before the expiry of six months period as provided under the Statute, the appeal filed was well within time.

On the other hand, Mr. S. Udayakumar, learned Additional Central Government Standing Counsel, by drawing my attention to Section 128 of the Customs Act, 1962, would contend that inasmuch as the appeal was presented after the expiry of six months time, the first respondent is justified in passing the impugned order, accordingly prayed for dismissal of the writ petition.

5. The only point for consideration is whether the appeal sent to the first respondent by certificate of posting on 2-5-1992 and received in the

office of the first respondent on 25-5-1992 is within the time prescribed u/s 128 of the Customs Act.

6. In view of the limited issue, namely, limitation question, it is unnecessary to go into the factual aspects. Admittedly, this court has not made any

observation regarding limitation while disposing of the earlier writ petition, viz., W.P. No. 17377 of 1991. In other words, the said writ petition

relates to release of the labelling machine and this Court directed to release the said machine on fulfilment of certain conditions. It is the case of the

petitioner that after disposal of the earlier writ petition, since the concerned file had been mis-placed in their office and it was traced out only in the

third week of April, 1992, they had sent appeal to the first respondent by certificate of posting on 2-5-1992 which is after 3 months, but within six

months from the date of receipt of the order in original. If the date on which the petitioner sent the appeal papers by post is accepted, their appeal

would be within time. However, the appeal papers were received in the office of the first respondent only on 25-5-1992 and if the said date is

accepted, the appeal filed by them is liable to be rejected as time barred. In this regard, it is useful to refer the relevant provisions of the Customs

Act, 1962. Section 128 of the said Act, which deals with appeals, runs as follows :-

Section 128. Appeals to Commissioner (Appeals), - (1) Any person aggrieved by any decision or order passed under this Act by an officer of

customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within three months from the date of the

communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal

within the aforesaid period of three months, allow it to be presented within a further period of three months.

(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.

It is clear from Sub-section (1) of Section 128 that the limitation prescribed for filing appeal against the decision or order passed by an officer of

Customs to the Commissioner (Appeals) is 3 months from the date of communication to him of such decision or order. As per Proviso to Sub-

section (1), if the appellate authority is satisfied that the appellant was prevented by sufficient cause for presenting the appeal within the said period

of 3 months, he may allow it to be presented within a further period of 3 months. In other words, after expiry of six months from the date of receipt

of the communication, the appellate authority has no power to condone the delay. There is no dispute that the appeal papers were received in the

office of the first respondent only on 25-5-1992 i.e., after expiry of six months from the date of order in original was received. However, it is

stated that inasmuch as they had sent the appeal by certificate of posting even on 2-5-1992, the same may be accepted as the relevant date for the

purpose of limitation. The said contention cannot be accepted for the following reasons. As per Section 128 of the Customs Act, appeal has to be

presented before the appellate authority. The procedure for filing appeals is set out in Rule 6 of Customs, Excise and Gold (Control) Appellate

Tribunal (Procedure) Rules, 1982. The said rule is as follows :-

Rule 6. Procedure for filing appeals, - (1) A memorandum of appeal to the Tribunal shall be in the relevant form and shall be presented by the

appellant in person or by an agent to the concerned officer, or sent by registered post addressed to the concerned officer:

Provided that the appellant may, in case of urgency or for other sufficient reason, present or send the appeal to the concerned officer of the Bench

nearest to him, even though the matter relates to a different Bench; and in such a case the officer receiving the appeal shall, as soon as may be,

forward it to the concerned officer of the appropriate Bench.

(2) A memorandum of appeal sent by post under Sub-rule (1) shall be deemed to have been presented to the concerned officer on the date on

which it is received in the office of the concerned officer.

It is clear from the said Rule that the appeal can be filed before the appellate authority by presenting the appeal by the appellant in person or by the

agent or by sending registered post addressed to the officer concerned. It is true that as per Sub-rule (1) of Rule 6, the aggrieved person can

prefer an appeal by sending the appeal papers by registered post addressed to the concerned officer in the Tribunal. However, Sub-rule (2) makes

it clear that the appeal sent by post as per Sub-rule (1) is deemed to have been presented before the concerned officer on the date on which it is

received in the office of the concerned officer. This clause makes it clear that the date of presentation of the appeal is the date on which it is

received in the office of the concerned officer. I have already stated and there is no dispute that the appeal papers sent by the petitioner were

received in the office of the first respondent only on 25-5-1992 i.e., after expiry of six months from the date of receipt of the impugned order.

Accordingly, the order of the first respondent cannot be faulted with.

7. Mr. Mohan Parasaran, learned Counsel for the petitioner has very much relied on a decision in the case of Ruby Rubber Works Limited Vs.

Asstt. Collector of Central Excise, I.D.O. and Others, . The said decision is not at all helpful to the case of the petitioner since in that case initially

the appeal was addressed to a wrong person and in such a circumstance, the learned single Judge of the Kerala High Court has held that if the

appeal had not been wrongly addressed, it would have in all probability reached the appellate authority well within time. In saying so, the learned

Judge directed that the appeal should be disposed of on merits after giving an opportunity of being heard to the petitioner even though received late

in their office. As stated earlier, the said decision is not applicable to our case, since in our case, the appeal papers were sent to the correct person.

8. The next decision relied on by Mr. Mohan Parasaran is in the case of 1989 (42) ELT 451 . First of all, it is a decision of the Tribunal and the

same is not binding on me. In that case, the appeal was despatched by the appellant before the expiry of limitation, but received in the office of the

Collector (Appeals) beyond the period of limitation. The Tribunal, following the earlier order of the Gujarat High Court, accepted that inasmuch as

dispatch of the appeal was made before the expiry of limitation though received by the office of the Tribunal beyond six months, time. I am unable

to share the view expressed by the Tribunal in the light of the specific provision, namely, Section 128 of the Act and Rule 6 (2) of the Rules.

9. Learned Additional Central Government Standing Counsel has very much relied on the decision of the Apex Court in the case of F.N. Roy Vs.

Collector of Customs, Calcutta, . The conclusion arrived at by Their Lordships is an answer to our case. In para 35, Their Lordships have

observed as follows :-

The petitioner states that he received the order of confiscation on 3rd February,

1954, he would not be within time. The memorandum of appeal however was received by the Central Board of Revenue on 6th May, 1954. That must be taken to be the date when the appeal was filed, and that being so the appeal must be taken to have been filed clearly out of time... It is clear that the date on which the appeal was received by the concerned officer is the relevant date for the purpose of limitation and not the date in which the appeal was sent by post. It is also worthwhile to refer two decisions of this Court, one is in the case of Maheshwari, R. v. Secretary Selection Committee etc., 1955 1 L.W. 348 and another full bench decision is in the case of Vinoth Kumar, R. v. Secretary, Selection Committee, Sabarmathi Hostel, KM.C. etc., 1955 1 L.W. 351 . In the first case, namely, 1955 1 L.W. 348, the Division Bench considered the aspect of posting applications to the post office within the prescribed time.

In paragraph 5, Their Lordships have held as follows :-

5. However, learned counsel appearing for the appellant submits that when the Selection Committee has accepted Post Office as an agency through which applications could be sent, the moment the application was handed over to the Post Office, prior to the last date fixed, it must be deemed to have been submitted to the Selection Committee on the date it is handed over to the Post Office. As the petitioner has handed over the cover to the Post Office to be sent through registered post on 14-7-1994, the application must be deemed to have been filed well within time irrespective of the fact that it was delivered after 15-7-1994. We find it very difficult to accept this submission. The notification, as already referred to, apart from giving option to the candidates to send applications through post, it further specifically provides that the last date for receipt of the applications is 15-7-1994 at 5-30 P.M. The notification does not fix two dates; one for those who deliver the applications in person and another for those who send the applications by post. Therefore, whenever a notification calling for applications fixes the date and time within which the applications are to be received irrespective of the fact whether such applications are sent through post or by any other mode, as long as the same are not received within the time and date fixed, the same cannot be considered as having been received on the date it was handed over to the Post Office.

The said view of the Division Bench has been approved and followed by the Full Bench of this Court reported in 1995 1 L.W. 351 (cited supra).

It is clear that when particular date is prescribed, the application or appeal is to be presented before the date. In our case, in the light of Sub-rule

(2) of Rule 6, the date on which the appeal is received in the Office of the concerned officer is the relevant date and inasmuch as the appeal sent by

the petitioner on 2-5-1992, which was received in the office of the first respondent only on 25-5-1992, is undoubtedly after the expiry of the six

months' period prescribed; accordingly I am in agreement with the conclusion arrived at by the first respondent and unable to accept the argument

of the learned counsel for the petitioner.

10. Under these circumstances, I do not find any error or infirmity in the order impugned; consequently the writ petition fails and the same is

dismissed. No costs. The stay petition (W.M.P. 18361/93) is also dismissed.