(2010) 10 KL CK 0230

In the High Court Of Kerala

Case No : Customs Appeal No. 12 of 2010

Mohd. Fariz and Co. APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:
Customs Act, 1962 — Section 129A, 129A(3), 129A(4), 129A(5), 129B

Citation : (2010) 260 ELT 29

Hon'ble Judges : K. Surendra Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : C.K. Karunakaran, for the Appellant; John Varghese, SC, Cen. Board of Excis, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—This is an appeal filed against the order of the Customs, Excise and Service Tax Appellate Tribunal dismissing an application for condonation of delay filed along with the appeal. Registry has numbered the appeal probably believing that appeal will lie against an order dismissing a delay condonation petition and consequently the appeal. We have heard counsel appearing for the appellant and standing counsel Sri. John Varghese appearing for the respondent on the question of maintainability of appeal before this Court u/s 130 of the Customs Act, 1962, hereinafter called the "Act".

2. The provision for filing appeal before the Tribunal is contained in Section 129A of the Act, which in Sub-section (3) states that appeal shall be filed within a period of three months from the date of receipt of the order appealed against. However, Sub-section (5) of Section 129A states as follows:

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after expiry of the relevant period referred to in Sub-section (3) or Sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

What is clear from the above provision is that Tribunal can admit an appeal only if delay in filing the appeal is condoned by it after being satisfied that the appellant was prevented from filing the appeal for good and sufficient cause. In other words, unless the Tribunal is satisfied about the sufficiency of the ground for condonation of delay, and they pass orders condoning the delay, appeal cannot be admitted at all. If delay condonation petition is dismissed, then appeal does not happen to be admitted and it is as if no valid appeal is filed before the Tribunal. Necessarily if delay condonation petition is dismissed, as is done in this case, Tribunal has to pass orders dismissing the appeal as a consequence of the order declining to condone the delay in filing the appeal. The effect of dismissal of the appeal is only a refusal to entertain the appeal u/s 129A of the Act. So much so, in the eye of law, once delay condonation petition is dismissed, belated appeal cannot be treated as valid appeal filed u/s 129A of the act. We do not know the practice followed by the Tribunal in numbering the appeals. In our view, appeal can be numbered only if delay condonation petition is allowed, and the Tribunal facilitates entertainability of the appeal filed beyond the time limit.

3. Appeal to the High court is provided u/s 130 of the Act which provides as follows:

130. Appeal to High Court.--(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purpose of assessment), if the High Court is satisfied that the case involves a substantial question of law.

....

What is clear from the above provision is that appeal is against every order passed by the Tribunal in an appeal filed before it. Orders of the Appellate Tribunal are covered by Section 129B of the Act, which provides procedure for hearing and disposal of appeals before the Tribunal. Appeals referred to in Section 129B are valid appeals filed u/s 129A which are either appeals filed within time or belated appeals entertained by the Tribunal after condoning the delay in terms of order passed under Sub-section (5) of Section 129A. So much so, when the appeal filed is not entertained by the Tribunal, no order can be passed on such appeal by the Tribunal and the order passed by the Tribunal dismissing the belated appeal on account of rejection of delay condonation petition cannot be treated an order passed u/s 129B in the appeal filed by the appellant. So much so, an order rejecting an appeal after dismissal of delay condonation petition is not an order in appeal against which appeal will like to the High Court u/s 130 of the Act. So much so, appeal is not maintainble before this Court u/s 130 against order passed by the Tribunal declining to entertain a belated appeal filed by reason of rejection of delay condonation petition filed u/s 129A(5) of the Act.

We direct the Registry not to number any appeal filed u/s 130 of the Customs Act, against orders of the Tribunal dismissing belated appeal consequent upon dismissal of delay condonation petition filed u/s 129A(5) of the Customs Act.

We therefore reject the appeal as not maintainable u/s 130 of the Act. It is for the appellant to seek remedy if any against the impugned order of the Tribunal dismissing delay condonation petition by filing Writ Petition or otherwise.