(2014) 06 CESTAT CK 0011

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs COD Application No. 58103 Of 2013 In Appeal No. 524 Of 2011

?M/s Flower And Tissue India Ltd. APPELLANT

Vs

CC, Jaipur RESPONDENT

Date of Decision : 27-06-2014

Acts Referred:
Central Excise Act, 1944 — Section 37C

Citation : (2014) 06 CESTAT CK 0011

Hon'ble Judges : Archana Wadhwa, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Jatin Mahajan, Rakesh Puri

Final Decision : Disposed Of

Judgement

1. The interesting fact are involved in the present application. It is seen that the appellant filed an appeal on 26th July, 2011 against the order of the

Commissioner of Central Excise, Jaipur passed on 02/12/99. The date of receipt of the order was reflected by the appellant, in their memo of appeal,

as 25/05/11.

2. The said fact was noticed by the registry and a defect memo was issued to the appellant directing them either to show the proof of receipt of the

order on 25/05/11 or to file a COD application. In response to the said defect memo, the appellant enclosed an affidavit in respect of their claim that

the impugned order was received by them only on 25/05/11. The said affidavit was accepted by the Registrar vide proceedings dated 30/08/11 and the

appeal was registered with regular number. The stay application was posted for hearing on 09/12/11 and stay order was passed on 09/12/11.

3. Thereafter Revenue filed a miscellaneous application drawing the attention to

the effect that the appeal was filed in the year 2011 against an order-

in-original passed on 02/12/99 and as such there was a delay of around 12-13 years in filing the appeal. The said miscellaneous application was listed

and the Tribunal vide order dated 22/03/13 directed the applicant to file a COD application. Accordingly COD application stand filed by the appellant.

4. As per the appellant, they are 100% EOU located at (Bhiwadi) B-493, RIICO Industrial Area, Bhiwadi. On account of failure to carry on their

business, their factory had to be shut down and accordingly letter was written to the Development Commissioner on 04/02/97 for debonding of the

unit. A copy of the said letter was also given to the Assistant Commissioner, Jaipur, having jurisdiction over their factory. Thereafter it seems that

show cause notice was issued on 18/06/99 by addressing If the same to their factory address as also to their office premises at Delhi as also at Jaipur.

As their factory was admittedly closed they did not receive the notice at their factory. It is also the contention of the learned advocate appearing for

the appellant that the notices were also not received at their office address and as such no participation was done by them in the adjudication

proceedings. However, the Commissioner, after affording one date of personal hearing, passed the impugned order. As is clear from the impugned

order of the Commissioner, the same was sent to their factory address only.

5. It is only subsequently when they approached the Development Commissioner for debonding of the unit, they were advised to taking clearance from

the Excise and Customs Department and they approached the Revenue for grant of such clearance, they were told about the present impugned order.

Subsequently, the applicant filed RTI application and procured the order on 25/05/11 and filed the present appeal within the period of three months. As

such it is the contention of the learned advocate that in as much as the period of limitation of three months start running from the date of receipt of the

order and the order having been received by them on 25/05/11, and the appeal having been filed within three months there is no delay requiring any

condonation. Alternatively, he prays that the delay even if it is considered to be there, should be condoned in as much as the impugned order stands

passed in violation of principles of natural justice and the appellant has a good case on merits.

6. Countering the arguments, learned DR Shri Rakesh Puri though fairly agree

that the show cause notice and the order sent to the appellant vide

registered AD post were returned back as the factory was lying closed. Thereafter the show cause notice as also the impugned order were affixed on

the gate of the factory in which case the provisions of Section 37C of the Central Excise Act, 1944 should be held to have allowed to and the service

should be considered as having been completed. For the above purposes, he relies upon the Hon'ble Punjab & Haryana High Court decision in the

case of CCE, Ludhiana vs. Mohan Bottling Co. (P) Ltd. reported in 2010 (255) E.L.T. 321 (P&H). He also draws our attention to another decision of

the Tribunal in the case of Competent Automobiles Company Ltd. wherein delay of around 1916 days was not condoned.

7. We have considered the submissions made by both the sides. Some peculiar facts have to be taken note of and appreciated in the present appeal.

The appellant was a 100% EOU and was working under the jurisdiction of Central Excise, Jaipur. As early as on 4th February, 1997 appellant

addressed a letter to the Development Commissioner indicating that they are closing down their unit situated at Bhiwadi. A copy of the said letter was

addressed to the Assistant Commissioner at Jaipur. The show cause notice was issued subsequently in the year 1999. It is Revenue's own case that

the said show cause notice could not be served to the appellant and as such the copy of the same was posted at the factory gate. Admittedly, the

appellant did not participate in the adjudication proceedings and after affording one date of hearing, the impugned order was passed. Admittedly, the

impugned order sent to the appellant vide registered post was received back undelivered and a copy of the same was pasted at the factory gate of the

appellant, which was admittedly closed.

8. Technically, as also in terms of the Hon'ble Punjab & Haryana High Court decision in the case of CCE, Ludhiana vs. Mohan Bottling Co. (P) Ltd.

(supra) the service of the order might have been completed with the pasting of the order on the factory gate. The period of filing appeal against an

order start running from the date of communication of the order to the assessee. When admittedly the fact of factory being closed was in the

knowledge of the Revenue, surprisingly no efforts were made by the Revenue to serve the copy of the order to the assessee at their alternative

addresses. The Revenue thought it fit to paste the order in the closed gate of the factory and satisfied to have completed their duty. One factory,

which needs to be taken into consideration is that during the intervening period of 11 to 12 years, the Revenue has not made any efforts (at least

shown to have made on record) to recover the amounts, in question. This fact also supports the appellants stand that they had not received the order in

as much as no Departmental officer approached them for recovery of the dues, during the intervening period. It is only when they approached the

Development Commissioner for debonding of their unit and were advised to obtain a no clearance certificate from the Revenue, they approached the

Revenue and were informed about the passing of the present impugned order. Immediately they procured a copy of the order under RTI application

and filed the appeal within the limitation period of three months. As such, we are of the view that either there is no delay in filing the appeal or even if

there is a delay, the same is not intentional in as much as the appellant has established that the order was not received by them and as such the same

requires condonation. We order accordingly and accept the appeal on record.

9. We also are of the view that the appeal itself can be disposed of at this stage as admittedly (as recorded in the preceding paragraph), the impugned

order stand passed without hearing the appellant. In fact as per the appellant even the show cause notice was not received by them. The defence plea

of the appellant was also not available before the Adjudicating Authority. As such we deem it fit to set aside the impugned order and remand the

matter to the Commissioner for fresh decision. Learned advocate fairly agrees that they have procured the copy of the show cause notice and will not

raise the plea of limitation etc. in receipt of the notice. However, they are free to raise any defence pleas in support of the merits of the case before

the Adjudicating Authority. COD application as also the appeal stand disposed of in above manner.

(Dictated and pronounced in open court)

