(2013) 03 BOM CK 0035

In the Bombay High Court

Case No : Customs Appeal (Loading) No. 4 of 2013

Nitesh Sadarangani — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:
Customs Act, 1962 — Section 153, 153(b)

Citation : (2013) 294 ELT 187 : (2013) 23 GSTR 184

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : Dattatraya V. Godbole, for the Appellant;

Judgement

1. The appellant has filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal, Mumbai, under the Customs Act, 1962 on 2 November 2012 after a lapse of more than 10 years from the date of the order of adjudication passed by the Commissioner of Customs (Preventive) on 31 January 2002. The case of the appellant is that he had changed his residence from Mumbai to Pune and it was only when he requested the department by a letter dated 1 October 2012 to inform him of the status of his case that he was informed by a reply dated 25 October 2012 of the order of adjudication. Section 153 of the Customs Act, 1962 provides that any order or decision passed or any summons or notice issued under this Act, shall be served--(a) by tendering the order, decision, summons or notice or sending it by registered post or by such courier as may be approved by the Commissioner of Customs; (b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house.

2. In the present case, as the findings contained in paragraph 3 of the impugned order would indicate; several attempts were made to serve the appellant by registered post. The operation reports which have been referred to in the order of the Tribunal indicated that the appellant was absconding since there was a COFEPOSA detention order against him, pending execution during the period.

The Additional Chief Metropolitan Magistrate, Mumbai by an order dated 28 September 2001 required the presence of the appellant on 21 December 2001 by cancelling the bail issued to him earlier. Eventually as required u/s 153(b), a copy of the order was displayed on the notice board of the Customs house. The Tribunal was under the circumstances justified in coming to the conclusion that service was duly complete as required u/s 153 and if the appellant had changed his address, it was his duty to inform the authorities. As a matter of fact, the appellant was absconding in view of the COFEPOSA detention order and the proclamation made for his appearance. The appellant was evading the service of summons. No case for condonation of delay is made out. The appeal does not raise any substantial question of law. It is accordingly dismissed.

