(2014) 01 AHC CK 0300

In the Allahabad High Court

Case No : Central Excise Appeal Defective No. 2 of 2014

Raj Ratan Industry Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35(1), 35Q, 37C, 37C(1)(a)

Citation : (2014) 306 ELT 252 : (2014) 44 GST 481 : (2014) 27 GSTR 269

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J;Dilip Gupta, J

Bench : Division Bench

Advocate : Pankaj Bhatia and Gopal Verma, Advocate for the Appellant; Vinod Kant, Advocate for the Respondent

Judgement

1. The appeal by the assessee arises from an order of the C.E.S.T.A.T. dated 21 June 2013 on an application for rectification filed by the assessee. The assessee filed an appeal before the Commissioner (Appeals) on 17 December 2009 against an order dated 31 December 2008 of the Joint Commissioner of the Central Excise, Kanpur. By an order dated 19 April 2010, the Commissioner (Appeals) dismissed the appeal on the ground that the appeal was filed beyond a period of sixty days from the date of communication of the decision of the Adjudicating Officer and that he had power u/s 35(1) of the Central Excise Act, 1944 to allow it to be presented within a further period of thirty days only, if he was satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of thirty days. The Tribunal confirmed the decision in appeal on 7 February 2012. In an appeal filed by assessee, a Division Bench of this Court by an order dated 12 December 2012 permitted the appellant to move an application for rectification before the Tribunal since the contention of the appellant at that stage was that the order of the Adjudicating Officer was served on an employee of the appellant Vijay Agarwal, who was not an authorised representative within the meaning of Section 37C(1)(a). Accordingly, an application for rectification was filed, which has been dismissed by the impugned order by the Tribunal.

2. Section 35(1) requires an appeal to be filed within a period of sixty days from the date of communication of the order to the assessee. However, under the proviso, the Commissioner (Appeals), on sufficient cause having been shown, can allow the appeal to be presented within a further period of thirty days. Section 37C provides that any decision or order passed or any summons or notices issued under the Act or the rules made thereunder shall be served by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgement due, to the person for whom it is intended or his authorised agent, if any.

3. The issue before the Tribunal was whether Vijay Agarwal was an authorised representative of the assessee.

4. Learned counsel appearing for the appellant submits that Vijay Agrawal, though an employee of the assessee, was not an authorised representative. Relying upon the proviso to Section 350, it is urged that an authorised representative means a person authorised by the assessee which, in this case, would mean a legal practitioner.

5. Before we deal with the provisions of law, the admitted facts may now be adverted to and they are that Vijay Agarwal was, at the material time, an employee of the assessee and a copy of the order of the Adjudicating Officer was personally served on him at the Range Office on 26 February 2009. Apart from these facts, it is material to note that the assessee filed an appeal before the Commissioner (Appeals) in which the averment of the assessee was to the following effect;

The copy of the order earlier was served to one of the employee of the company but the copy of the order was lost by him during the way to the factory. The management of the company was not aware of this fact and when the department informed him about the receipt of the order by one of the employee the management made an enquiry and come to know that the order was lost by one Shri Vijay Agarwal. Accordingly the appellant has lodged an F.I.R. regarding the loss of the copy of the order and also given the information of the loss of the order in the press also. Copy of the F.I.R and information made in the "Dainik Jagran News Paper" is collectively marked ANNEXURE-3. The appellant has removed the said employee from the company for his negligence. Copy of Board of Resolutions is enclosed marked ANNEXURE-4. The appellant requested for non-receipt of the copy of the order.

6. Even thereafter before the Tribunal in appeal, what was stated on behalf of the assessee was that the order of the Adjudicating Officer was received by one of the employees, Vijay Agarwal, on 26 February 2009 but the said order was lost during his return from the office of the Range Superintendent at Unnao. According to the appellant, an F.I.R. was lodged by the Company and a copy of the order was collected on 21 October 2009 after which the appeal was filed on 17 December 2009 and if the date of receipt is deemed to be 21 October 2009,

there would be no delay in filing the appeal.

7. It needs to be noticed that the F.I.R. was lodged by Vijay Kumar Agarwal. Initially, neither before the Commissioner (Appeals) nor before the Tribunal was it the case of the appellant that Vijay Agarwal was not an authorised representative. Such a submission was raised when the order was passed by this Court on 12 December 2012, by filing a rectification application.

8. The falsity of the case of the appellant is evident from the documentary material which has been placed on record by the learned counsel appearing on behalf of the Revenue. This includes the following:--

(i) An Acknowledgement dated 26 February 2009 issued by Vijay Agarwal of the receipt of the order in original dated 31 December 2008 in which he has signed as an authorised signatory of the appellant;

(ii) A Letter dated 28 August 2009 of the appellant in which Vijay Agarwal has again signed as an authorised signatory;

(iii) Acknowledgement dated 23 October 2009 executed by a Director of the appellant which specifically refers to Vijay Kumar Agarwal as an authorised signatory.

9. It has also been submitted that as late as on 5 August 2013, Vijay Agarwal had filed a refund application in Division-II Central Excise, Kanpur though subsequently it was withdrawn.

10. In our view, it is evident that Vijay Kumar Agarwal was infact an authorised signatory of the appellant-assessee. The submission that it is only a legal practitioner who can be an authorised representative is misconceived. Section 350(1) provides that any person who is entitled or required to appear before a Central Excise Officer or an Appellate Tribunal in connection with any proceedings under the Act, otherwise than when required to appear personally for examination on oath or affirmation, may appear through an authorised representative. Sub-section (2) defines the expression ''authorised representative'' for the purpose of sub-section (1) as inter alia being a regular employee. Section 35Q, which has been relied upon by the appellant would, therefore, not carry its case any further. In the present case, service was effected on an authorised representative and the order of the Tribunal does not suffer from any error.

11. The contention to the contrary is a clear afterthought. The Commissioner (Appeals) was correct in holding that he could not have condoned a delay beyond the period of thirty days under the proviso to section 35(1). In this connection, reference may be made to the judgment of the Supreme Court in Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and Others, .

12. Hence, for these reasons, the appeal would not raise any substantial question of law. It is, accordingly, dismissed. There shall be no order as to costs.