(1996) 02 KL CK 0014

In the High Court Of Kerala

Case No : O.P. No. 8693 of 1995-I

Standard Treads Pvt. Ltd. APPELLANT

Vs

Collector of Central Excise RESPONDENT

Date of Decision : 08-02-1996

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35

Citation : (1996) 83 ELT 30

Hon'ble Judges : V.V. Kamat, J;G. Sivarajan, J

Bench : Division Bench

Advocate : Joseph Kodianthara, for the Appellant; George Poonthottam, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

V.V. Kamat, J.—In both these petitions, the appeals before the Customs, Excise & Gold (Control) Appellate Tribunal, South Regional Bench at Madras have been dismissed confirming the impugned order passed by the Collector of Central Excise (Appeal), as the appeal before him having been filed after lapse of more than a year after the receipt of the order of the original authority, which is contrary to the statutory provision of Section 35 of the Central Excises and Salt Act, 1944.

2. Sri. George Poonthottam, learned Addl. Central Government Standing Counsel for the respondents strenuously sought to support the impugned orders.

3. Times without number, the approach of the Court in this situation is available through a series of decisions of the Supreme Court (illustratively in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, . Certain factors which are highlighted in regard to the approach would require emphasis in the context.

4. It has to be kept in the forefront that ordinarily a litigant does not stand to benefit by lodging an appeal late. He has no interest in wasting time. It has also to be borne in mind that the great possibility of disasterous results creating a

situation that a meritorious matter being thrown out at the threshold causing a heavy burden to the cause of justice has to be defeated at the very start. At the other end, it has also to be kept in mind that even if delay is condoned in an erroneous manner that the highest that can happen is that a cause would be decided on merits after hearing the parties. It must also be borne in mind that the law of limitation and the law of procedure have their important functions. The law of limitation protects the rival contestants for a telling mistake when he would be at complete loss with regard to the material making it more difficult in the process of contest after a period of time. The law of limitation has come on the statute to save the situation that as far as possible, persons should not be heard with regard to a cause after a specified time. Even the law of procedure is also understood to be a helpmate in the ultimate administration of justice and the spirit is that it is not to be considered as an obstruction in the process of justice. It is, therefore, implicit in the process of a desire to have the end of a litigation in a context that the conduct of the party has to be settled in a rational common sense and pragmatic manner. The Court has to see and be vigilant that technical consideration should not be allowed to be pitted against each other, keeping in mind that substantial justice would have a preference because nobody can be understood properly in a claim of vested right of injustice, which would be the result.

5. In this context, the last aspect is in the nature of a sentinel search light in the situation. Judiciary gets its respect in the legal order not on account of its power to legalise injustice on technical grounds. But, it has the capacity and purpose to remove injustice wherever it is in sight and this is what is under-'' stood and pointed out by the Apex Court as justice-oriented approach in regard to the matters being thrown out at the threshold of the concerned proceedings.

6. These petitions present the picture requiring to view the situation in the light of the above principles detailed herein before.

7. The orders under the two appeals are passed on 14th March, 1989 and it is the case of the Department that they were sent to the petitioner-appellant on 15th March, 1989 by registered post with acknowledgment due. However, we find from the record (P5) that by oversight, the postman delivered two registered letters (intimations of the orders) on 16th March, 1989, which were addressed to Standard Treads Pvt. Ltd., Parampuzha, Kottayam, not to the addressee, but to one Mr. Kartha, Manager, Anchor Treads Pvt. Ltd., Parampuzha, whose premises are situated adjacent to the Standard Treads Pvt. Ltd. It appears that on the basis of this submission of the postman concerned, there was an enquiry at the concerned post office, which is also apparent from Ext. P5, a letter dated 20th May, 1991 of the Postmistress.

8. In such a factual situation, it is clear that there is no conclusive evidence of service even though the authorities considered the communication, of senior Postmaster, Kottayam, confirming that the orders were delivered to the addressee on 16th March, 1989.

9. In our judgment, petitioner must succeed with regard to the prayers therein. Accordingly, respondent No. 2 is directed to refer the following questions of law.

1. "Whether in the facts and circumstances of the case, the two appeals filed by the applicant before the Collector (Appeals) are barred by limitation u/s 35 of the Central Excises and Salt Act, 1944?

2. Whether in the facts and circumstances of the case the presumption as to service of the two orders of the Assistant Collector on the Applicant has been rebutted?".

10. Communicate the order to the Customs, Excise & Gold (Control) Appellate Tribunal, South Regional Bench, Madras.