
(2006) 08 P&H CK 0339
In the Punjab And Haryana At Chandigarh
Case No : Custom Appeal No. 2 of 2005

Uniroyal Textile Industries Ltd.	Vs	APPELLANT
Commissioner of Customs, Group V-A, Air Cargo		RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Customs Act, 1962 — Section 128, 130, 28

Citation : (2006) 203 ELT 45

Hon'ble Judges : Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : R.K. Chhibbar and Chetan Dayal, for the Appellant; Ashwinie Bansal, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—The appellant has approached this Court against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short "the Tribunal"), dated 24.2.2005 raising eight substantial questions of law. As is evident from order dated 11.7.2006 the appeal was confined to proposed question Nos. (iii) and (v), which are extracted below:

iii) Whether, the impugned letter dated 30.6.2000 issued by the Ld. Deputy Commissioner of Customs Air Cargo, New Delhi to the appellant can be said to be a "decision or order" passed within the meaning of Section 28, 128 and 130 of the Customs Act, 1962 ?

v) Whether the order dated 29.9.2003 passed in appeal u/s 128 of the Customs Act, 1962 against the impugned letter dated 30.6.2000 issued/passed by Deputy Commissioner of Customs, New Delhi holding the appeal to be barred by limitation and thus not maintaining is liable to be set aside ?

2. On first question, the contention of the appellant is that a communication dated 30.6.2000 sent by the Deputy Commissioner (Customs) to the appellant raising a demand of Rs. 8,02,967/- on account of duty was not in the form of an

order passed within the meaning of Sections 128 and 130 of the Customs Act, 1962 (for short "the Act"). According to him, in this communication neither any reason has been recorded nor any plea raised by the appellant has been dealt with, hence, the same cannot be termed as a reasoned order. He has further contended that even the show cause notice should be treated beyond a period of six months, as no notice u/s 28 of the Act could be issued to the appellant after expiry of a period of six months from the date of passing the order by the authority as envisaged u/s 128 of the Act and in the present case a show cause notice having been issued on 30.3.1999 against the assessment of duty on 11.9.1998, the same was clearly time barred, there being no allegation of fraud etc. against the appellant. Further it is submitted after receipt of communication dated 30.06.2000, the appellant had been representing before the authority for affording him personal hearing. On the other hand, counsel for the respondent relied upon a judgment of Hon'ble the Supreme Court in *Lajya Dyeing and Bleaching Works Vs. Union of India (UOI)*, wherein a communication addressed to the assessee therein mentioning the details of duty already paid and which was required to be paid, determined after hearing the assessee therein, was held to be an order. A perusal of order dated 30.6.2000, which according to the appellant was not an order, shows that the same itself provided towards the end of the order that an appeal from this order lies to the Appellate Commissioner of Customs. The relevant part thereof is extracted below:

An appeal against this order lies to the Appellate Commissioner of Customs, within three months from the date of receipt of this letter, as prescribed u/s 128 of the said Act and it should bear a court fee stamp of fifty paise. The amount of duty as stated above shall have to be deposited u/s 128 of the said Act before the Appeal is entertained.

3. When the communication itself mentioned that the same was an order against which an appeal will lie to the next appellate authority and even the period of appeal as well as details regarding Court fee and the requirement of pre- deposit were also mentioned therein, still to say that the communication sent to the appellant was not an order is totally misconceived.

4. Further it is not disputed by the appellant that before passing the order the appellant was given due opportunity in the form of show cause notice to which the appellant had filed reply also. Accordingly, we do not find any merit in this contention of the appellant. As far as second issue is concerned, as per the provisions of Section 128 of the Act, the appeal could be filed against the order of the Deputy Commissioner (Customs) to the Appellate Commissioner of Customs within three months from the date of receipt thereof. Admittedly, the order was received by the appellant on 11.7.2000 and appeal against the same was filed by the appellant on 14.2.2001, which was clearly delayed. As far as the period of limitation is concerned, Section 128 of the Act provides that in case there is a delay in filing of appeal, the same can be condoned to the extent of further three months. Further from a perusal of order of the Commissioner

(Appeals) it is evident that sufficient reason was not shown by the appellant for filing the appeal late. In the absence thereof, the authorities were not wrong in not condoning the delay in filing the appeal.

5. Accordingly, we do not find any merit in the appeal, the same is dismissed.