(2001) 01 MP CK 0061

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5054 of 1999

Wearwell Tyres and Tubes Inds. P. Ltd. APPELLANT

Vs

Commr. of Cus. and C. Ex. RESPONDENT

Date of Decision : 24-01-2001

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35

Citation : (2001) 162 ELT 1167

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Ajay Mishra, for the Appellant; I. Nair, for the Respondent

Judgement

Dipak Misra, J.—Invoking the extraordinary jurisdiction of this Court the petitioner has prayed for issue of a writ in two nature of certiorari for quashing of the order contained in Annexure P.1 passed by the Commissioner of Customs and Central Excise on 1/4-3-99 rejecting the prayer of the petitioner under Kar Vivad Samadhan Scheme, 1998 on the ground that no appeal was filed by the petitioner within the stipulated period and as the same was time-barred the prayer for declaration was untenable.

2. The facts lie in a narrow compass. An order was passed by the adjudicating authority on 21-10-1995. The petitioner assailed the said order before the Commissioner (Appeals) on 22-12-98. After filing of this appeal the petitioner filed an application for declaration vide declaration No. 118 of 1998 under Kar Vivad Samadhan Scheme/ 1998 (hereinafter referred to as ''the Scheme''). It is averred in the writ petition that the order passed by the Commissioner vide Annexure P.1 is unsustainable inasmuch as the petitioner''s appeal was within the time stipulated under the statute and hence it was a valid appeal and during the pendency of the valid appeal the benefits of the Scheme are to be made available.

3. A return has been filed by the answering respondents contending, inter alia,

that the petitioner''s appeal was time-barred and the same having been preferred after expiry of six months the delay cannot be condoned by the appellate authority. It is further urged in the return that the petitioner was aware of the order when the detention order was passed vide Annexure P. 5, dated 30-1-97.

4. 1 have heard Mr. Ajay Mishra, learned Counsel for the petitioner and Mrs. I. Nair, learned Counsel for the respondent.

5. It is contended by Mr. Mishra that the appeal has to be preferred from the date of communication of the order passed by the adjudicating authority and in the present case as the same has been preferred within the stipulated time it is a valid appeal and, therefore, the benefit under the Scheme should have been made available to the petitioner. Learned Counsel for the petitioner has placed reliance on a Division Bench decision rendered in the case of Sk. Sajeer v. A.W. Kanmadikar, Member Judge, Industrial Court, Madhya Pradesh, Indore and Ors. 1971 M.P.L.J. 524.

Per Contra, Mrs. Nair, learned Counsel for the respondent has drawn inspiration from the order passed vide Annexure P.4 and has proponed that the appeal is grossly time-barred and the delay in question being uncondonable it cannot be regarded as a valid appeal.

6. To appreciate the rival submissions raised at the Bar it is apposite to refer to Section 35 which deals with Appeals to Commissioner (Appeals). Section 35(1) which is relevant for the present purpose reads as under :

"35. Appeal to Commissioner (Appeals). - (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) hereafter, in this Chapter referred to as the Commissioner (Appeals) within three months from the date of the communication to him of such decision order :

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months."

Submission of Mr. Mishra is that the appeal is to be preferred within three months from the date of communication of such decision or order. The learned Counsel has also drawn the attention of this Court to Section 37C which stipulates for the manner of service of decisions, orders, summons, etc.

The aforesaid provision reads as under :

"37C. Service of decisions, orders, summons, etc. - (1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served, -

(a) 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;

(b) if the decision, order, summons or notice cannot be served in the manner provided in Clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

(c) if the decision, order, summons or notice cannot be served in the manner provided in Clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice."

7. The learned Counsel has submitted that in the case of Sk. Sajeer (supra) this Court has ruled that the period which intervenes between the date of order and when the copy is given should be excluded. He has fairly conceded that the said judgment was delivered in connection with the provisions of M.P. Industrial Relations Act but the law laid down therein would be squarely applicable to the present case. It is not disputed at the Bar that the appeal is still pending before the Commissioner (Appeals) and he has not applied his mind with regard to the fact whether there has been delay in presentation of appeal.

8. Mrs. I. Nair, learned Counsel for the respondent fairly stated that if there is no delay in preferring the appeal the petitioner shall be entitled to the benefit of the scheme in the light of the law laid down in the case of Sheth Enterprises Pvt. Ltd. and Another Vs. Commissioner of Customs and Another, .

9. Having heard the learned Counsel for the parties at length, I am inclined to direct the Commissioner (Appeals) to address himself with regard to the delay, if any, in presentation of appeal. To cut short the delay it is directed that the petitioner shall appear before the appellate authority on 27-2-2001 and on that day the appellate authority may hear the petitioner for fix another date for hearing. It is expected that the appellate authority shall address itself to the contentions raised by the petitioner in regard to the presentation of appeal within the period of limitation and pass a reasoned order. In view of the above direction, I am inclined to quash the order passed vide Annexure P.1 and I so do. If eventually the appeal is regarded to have been presented within the period of limitation the respondent, Commissioner, Customs and Central Excise shall pass a fresh order and confer the benefit of the Scheme to the petitioner. If ultimately it is held by the appellate authority or thereafter by the other higher forums with regard to the ''delayed presentation of appeal the respondent shall pass appropriate orders in accordance with law.

10. The writ application is accordingly disposed of.

