

M/S Singh Enterprises vs Commissioner Of Central ... on 14 December, 2007

Author: Arijit Pasayat

Bench: Arijit Pasayat, Aftab Alam

CASE NO.:

Appeal (civil) 5949 of 2007

PETITIONER:

M/s Singh Enterprises

RESPONDENT:

Commissioner of Central Excise, Jamshedpur and Ors.

DATE OF JUDGMENT: 14/12/2007

BENCH:

Dr. ARIJIT PASAYAT & AFTAB ALAM

JUDGMENT:

J U D G M E N T (Arising out of SLP (C) No.4720 of 2006) Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Jharkhand High Court dismissing the Writ Petition filed by the appellant. Before the High Court appellant had challenged the order passed by the Commissioner (Appeals), Central Excise and Service Tax, Ranchi dismissing the appeal filed by the appellant under Section 35 of the Central Excise Act, 1944 (in short the Act). The said order was challenged before the High Court by filing a Writ Petition. The Commissioner had dismissed the appeal only on the ground that it was filed after 21 months of the date of service of the original order and the appellate authority did not have power to condone the delay beyond the period of 30 days from the date of expiry of period of 60 days prescribed for filing the statutory appeal.

3. The Division Bench noted that since the Commissioner had no power of condonation beyond the statutorily prescribed period, therefore, the writ petition was without merit. Before the High Court reliance was placed on a decision of this Court in I.T.C. Ltd. v. Union of India (1998 (8) SCC 610) to contend that the High Court had the power to condone the delay. This stand was not accepted by the High Court.

4. In support of the appeal, learned counsel for the appellant submitted that even if it is conceded for the sake of argument that the Commissioner had no power to condone the delay, yet the High

Court in exercise of power conferred under Article 226 of the Constitution of India, 1950 (in short the Constitution) can condone the delay. It is stated that the power in this regard is untrammelled by any statutory provision.

5. Learned counsel for the respondents on the other hand supported the orders of the Commissioner and the High Court.

6. At this juncture, it is relevant to take note of Section 35 of the Act which reads as follows:

5. APPEALS 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 sixty days from the date of the communication to him of such decision or 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 sixty days, allow it to be presented within a further period of thirty days.

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

7. It is to be noted that the periods sixty days and thirty days have been substituted for within three months and three months by Act 14 of 2001, with effect from 11.5.2001.

8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the Limitation Act) can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30

days period.

9. Learned counsel for the appellant has emphasized on certain decisions, more particularly, I.T.C. s case (supra) to contend that the High Court and this Court in appropriate cases condoned the delay on sufficient cause being shown.

10. Sufficient cause is an expression which is found in various statutes. It essentially means as adequate or enough. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. In the instant case, the explanation offered for the abnormal delay of nearly 20 months is that the appellant concern was practically closed after 1998 and it was only opened for some short period. From the application for condonation of delay, it appears that the appellant has categorically accepted that on receipt of order the same was immediately handed over to the consultant for filing an appeal. If that is so, the plea that because of lack of experience in business there was delay does not stand to be reason. I.T.C. s case (supra) was rendered taking note of the peculiar background facts of the case. In that case there was no law declared by this Court that even though the Statute prescribed a particular period of limitation, this Court can direct condonation. That would render a specific provision providing for limitation rather otiose. In any event, the causes shown for condonation have no acceptable value. In that view of the matter, the appeal deserves to be dismissed which we direct. There will be no order as to costs.