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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CUSAA 48/2011

BRAJESH KUMAR DUBEY

..... Appellant

Through: Ms. Sangita Bhayana, Adv.

versus

COMMISSIONER OF CUSTOMS & ANR

..... Respondents

Through: Mr. Shailesh Tiwari and Ms. Sonia
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

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25.11.2011

The present appeal under Section 130 of the Customs Act, 1962 is directed against the order dated 27th May, 2011 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (tribunal, for short) dismissing the appeal of the appellant on the ground of limitation.

2. Learned counsel for the appellant submits that there has been non-compliance of Section 153 of the Act and the order passed by the Commissioner was served on the appellant on 14th December, 2009 and, therefore, the appeal preferred before the Tribunal was within limitation.

3. The order passed by the Commissioner of Customs Air Cargo, New

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Delhi was impugned before the tribunal is dated 14th October, 1999. The appeal was preferred against this order after more than 10 years. The allegation against the appellant is that a consignment of computer parts imported by Smridhi Enterprises was checked, after it had been cleared and issued out charge and was found to be containing 84,000 pieces of watch movements collectively valued at Rs.1,05,00,000/-, instead of computer cabinet with power supply as was declared. Smridhi Enterprises was found to be non-existing at the declared address and the appellant was the person behind/involved with the import.

4. Section 153 of the Customs Act provides that any order or decision passed under the Act shall be served by tendering the order or decision by sending it by registered post to the person for whom it is intended and in case the order or decision cannot be served in a manner provided by affixing it on the notice board of Customs House. The learned counsel for the appellant has submitted that the original assessment order file of the department is not traceable. This appears to be the reason why the appellant has taken up the said plea. The appellant had participated in the proceedings and it cannot be conceived and accepted that he did not, for 10 years, know the outcome or order passed by the authority. The Tribunal in this connection has referred to attempts made by the Revenue to recover penalty of Rs.15

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lacs after the order dated 14th October, 1999 was passed. The Tribunal has referred to the file notings from 2004 onwards when officers of the customs department had visited the appellant at his residence at E-27, New Multan Nagar, New Delhi to make recovery of fine of Rs.15 lacs. Correspondence/ letters were also issued to the appellant from 2004 onwards at his correct residential address. In view of the above circumstances, the tribunal cannot be said to have committed any error in not exercising its discretion to condone delay of 10 years in filing the appeal. The appellant was deliberately sitting on the edge and marking time and only when tough and harsh steps for recovery were taken did he belatedly approach the tribunal.

5. In these circumstances and in view of the findings of the Tribunal, we do not think that any substantial question of law for consideration arises in this appeal and the same is accordingly dismissed.


SANJIV KHANNA, J


R.V.EASWAR, J

NOVEMBER 25, 2011

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