

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1805 OF 2015

Balaji Marbles.

....Petitioner.

vs.

The Union of India and anr.

....Respondents.

Mr. Prakash Shah with Jas Sanghavi i/by PDS Legal for the Petitioner.
Shri.Vijay Kantharia for Respondent No.2.

CORAM : S.C. DHARMADHIKARI &
SUNIL P. DESHMUKH, JJ.

DATE : 02 MARCH 2015

PC:

This writ petition challenges the order passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai.

2) By order passed on 6 May 2014 the Tribunal has dismissed the petitioner's application requesting condonation of delay of more than five years in filing a statutory appeal.

3) In the application seeking condonation of delay copy of which is at Exh.A Page-82 of the paper book, the petitioner-

applicant stated that the order in original is dated 10 March 2008. The copy of the impugned order was served upon the petitioner-applicant only on 20 June 2013. They filed the appeal on 23 June 2013 which is within the statutory period of three months.

4) However, the registry of the Tribunal raised an objection and pointed out that the order impugned in the appeal is dated 10 March 2008. Therefore, the applicant-petitioner moved an application seeking condonation of delay. The applicant reiterated the grounds and pointed out as well that import of marble was made by the petitioner-applicant. The classification of the said product/goods was in issue and the petitioner's assertion was rejected by the department/revenue. A notice to show cause was issued on 14 September 1998. However, on 12 May 1999 the revenue/department received a letter from the petitioner/applicant informing them that the petitioner/applicant has changed the address/place of business. Yet, the adjudication order was dispatched at the old address. Therefore, postal remark "left" was endorsed on the packet. That was because the petitioner-applicant has left premises long time back. The

petitioner has pointed out that the notice for personal hearing was sent at the new address. However, the copy of the adjudication order was sent at the old address and therefore, it was not aware about the passing of the adjudication order. It is only when the recovery proceedings were initiated the petitioner became aware of the adjudication order and that is how the delay occurred and there is sufficient cause for the same.

5) In the reasons recorded by the Tribunal, the Tribunal has relied upon Section 153 of the Customs Act. That provision reads as under:-

Section 153- Service of order, decision, etc.- Any order or decision passed or any summons or notice issued under this Act, shall be served-

(a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or

(b) If the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house”.

A Perusal thereof would indicate that how the provision enabling service of order, decision etc. contemplates service of order or decision passed or any Summons or Notice.

Clause (a) thereof denotes as to how the order/decision passed or any summons or notice issued under the above section shall be served. It shall be by tendering it personally or sending it by registered post to the person for whom it is intended or to his agent. Now, the words inserted with effect from 28 May 2012 are “registered post or by such courier as may be approved by the Commissioner of Customs”. We do not find as to how reliance could be placed on clause (b) by the Tribunal in this case. It is only when the service is not possible in the manner provided in clause (a) that affixation of the order, decision, summons or notice on the notice board of the customs house is permitted. In such circumstances, if the packet containing copy of the adjudication order dated 10 March 2008 was not sent by registered post at the address to which the petitioner has shifted as informed way back in 1999, then, there is no question of placing reliance on clause (b) of the above section. The Tribunal's order is vitiated by total non application of mind. The Tribunal should have referred to the service by registered post and which ought to be effected at the changed address. Then the version of the petitioner-applicant

deserves acceptance. It is the date of the service of the order or its knowledge from which in this case the petitioner applicant claimed that the time will began to run. The delay was satisfactorily explained by the petitioner. Suffice it to say that, the Tribunal is in error in dismissing the application for condonation of delay and therefore, this writ petition is allowed by setting aside the Tribunal's order. We allow the petitioner's application for condonation of delay and direct the Tribunal to hear the petitioner's appeal in accordance with law. All contentions on merits of the appeal are kept open. Accordingly, this writ petition is disposed of.

(SUNIL P. DESHMUKH, J.)

(S.C. DHARMADHIKARI, J.)