

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CUSTOMS APPEAL NO. 95 OF 2014**

M/s. New Drug & Chemical Co. ...Appellant.
versus
Union of India and another ..Respondents.

.....
Mr. Brijesh Pathak for the Appellant.
Mr. Pradeep S. Jetly for the Respondents.

.....
CORAM : B.R. GAVAI &
A.S. GADKARI, JJ.

23rd March, 2015.

P.C. :

The Appeal challenges the order passed by the learned CESTAT dated 29th April, 2014 thereby dismissing the application filed by the present Appellant for condonation of delay in challenging the order dated 29th August, 2007.

2. The Appeal is taken up for hearing finally.

3. The facts in the present case are as under :

The Appellant has imported Bronopol between May 2004 to January 2007. A show cause notice came to be issued to the Appellant on 11th April, 2007. The Appellant filed detailed reply to the show cause notice on 24th April, 2007. Addendum to show cause notice came to be issued on 9th May, 2007. The Appellant filed a further reply on 12th June, 2007. The personal hearing was attended by the

learned counsel appearing for the Appellant which was held on 4th July, 2007. It is the contention of the Appellant that though an order in original came to be passed In August 2007, the Appellant was not served with the copy of the order and he came to know about passing of the order dated 29th August, 2007 only after he was served with recovery notice. In this background, the Appellant immediately preferred an appeal along with the application for condonation of delay. By the impugned order the application for condonation of delay came to be rejected. Hence, the present Appeal.

4. Mr. Pathak, learned counsel appearing for the Appellant submits that the Appellant was never served with an order in original passed by the authority. However, after coming to know about the said order when he applied for a copy of the same upon receipt of the recovery notice, he immediately obtained a copy and filed an appeal. It is, therefore, submitted that there is not deliberate or willful delay on the part of the Appellant. He further submitted that as a matter of fact, when the Appellant was before the original authority, there is no reason as to why he would not have filed an appeal within the prescribed period. He, therefore, submits that the Appeal deserves to be allowed and the application for condonation of delay deserves to be allowed.

5. Mr. Jetly, on the contrary submits that since the order was served by affixing it on the notice board of the Customs House, the service was in accordance with law and as such, the Appeal ought to have been filed within the prescribed period.

6. After hearing the rival parties, we find that the following questions of law arise for consideration :

- i) Whether the learned Tribunal was justified in holding that the order in original was duly served upon the Appellant;
- ii) Whether the learned Tribunal was justified in rejecting the application for condonation of delay.

7. For considering the rival submissions, it will be necessary to refer to the relevant portion of Section 153 of the Customs Act :

“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.”

8. Perusal of clause (a) Section 153 of the Customs Act would

reveal that any order or decision passed or any summons or notice issued under the Customs Act is required to be served firstly by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended. Perusal of clause (b) would reveal that however when the order cannot be served in the manner as provided under clause (a), then it has to be served by affixing it on the notice board of the customs house.

9. Undisputedly in the present case even according to the learned counsel the order was sought to be served on the Appellant by Speed-Post. Admittedly, the order was not served upon the Appellant by the registered post as required under clause (a) of Section 153. The Division Bench of this Court in the case of **Amidev Agro Care Pvt. Ltd. v. Union of India** reported in **2012 (26) S.T.R. 299 (Bom.)** while considering the para materia provisions under the Central Excise Act 1944 has held that since Speed-Post is not mentioned under Section 37-C of the Central Excise Act, service of notice by Speed-Post is not valid in law. We find that in the present case also since speed-post is not mentioned and since even according to the Respondent, the order was sought to be served by Speed-Post and since there is not even an acknowledgement in token of service by the Speed-Post, there was no valid service in law. As already discussed herein above, recourse to clause (b) of Section 153 would be permissible only in the

event it is not possible to serve the order by the mode prescribed in clause (a) of the said Section. Undisputedly in the present case, even an attempt was not made to serve the Appellant in the manner prescribed under clause (a) of Section 153.

10. In that view of the matter, we find that the questions which are framed herein above are required to be answered in favour of the Appellant. We hold that the service of the order in original on the Appellant was not in accordance with law. We further hold that since the service of the order in original was not in accordance with law, the learned Tribunal was not justified in dismissing the application for condonation of delay.

11. In the result, the Appeal is allowed. The impugned order is quashed and set aside. The application filed by the Appellant for condonation of delay before the learned Tribunal stands allowed.

(A.S. Gadkari, J.)

(B.R. Gavai, J.)