IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CENTRAL EXCISE APPEAL NO. 11 OF 2015

(M/s. ENESTEE Engineering Private Limited vs. Union of India thr. its Chief Secretary, Ministry of Finance & Ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI &
P.N. DESHMUKH, JJ.
OCTOBER 21, 2015.

Heard Shri Phadnis, learned counsel for the appellant and Shri Deshpande, learned counsel for the respondents.

Shri Deshpande, learned counsel is seeking time to produce before the Court certain records.

Shri Phadnis, learned counsel, however, submits that the Appeal Against Order-in-original is found belated only because its copy is shown to have been forwarded to the appellant – assessee. This finding is legally insufficient to hold that the appeal is barred by limitation. Accordingly, the order of Appellate Authority was questioned in further appeal before Respondent No. 4 – Customs, Excise and Service Tax Appellate Tribunal (CESTAT). By the impugned order, the CESTAT has maintained it.

He submits that it was a specific case of the appellant – assessee that he did not receive adjudication order dated 22.07.2010 and only after receipt of letter from the Superintendent dated 21.03.2012 directing the appellant to pay the dues as per adjudication order, they learnt about it. Thereafter a copy of that order has been made available to him on 18.04.2012.

The substantial question of law to be decided is, whether impugned order looks into relevant facts or not ?

The relevant provisions having bearing on the question of limitation are contained in Section 85(3) of the Finance Act, 1994, read with Section 37(C)(2) of the Central Excise Act. The period of limitation prescribed to prefer Appeal Against Order in original is three months as per Section 85(3) of the Finance Act. The period begins from the date of receipt of the decision or the order of adjudicating authority. Section 37(C) of the Central Excise Act, is on the subject of service of decisions, orders, summons etc. As per sub-section (2), every decision or order passed or any summons or notice issued under the said Act is deemed to have been served on the date on which such decision, order or summons is tendered or delivered by post or then is affixed in the manner prescribed in sub-section (1).

A perusal of Section 37(C), therefore, shows insistence upon the service of such adjudication order upon the appellant – assessee. This is also supported by Section 85(3) of the Finance Act. Hence, the observation in the impugned order that the order-in-original has been forwarded to the assessee on a particular date is not sufficient in the eyes of law to start computing the period of limitation.

In its order dated 13.03.2013, the Commissioner (Appeals) in para 5 has observed that as per final record, the impugned order was dispatched to the assessee on 22.07.2010 and hence the assessee was required to file appeal within three months from the date of receipt of order-in-original. It is observed that thus there is delay of more than three months in filing the appeal. The date on which the order is received by the assessee has not been mentioned.

The assessee made his grievance about non receipt of order and argued that the appeal as filed was within limitation before the CESTAT. The CESTAT has in its decision on 02.09.2013 in para 7 again observed that the adjudication order was sent to the assessee on his correct address.

Thus, none of these orders record a finding that the adjudication order dated 22.07.2010 was actually tendered to the appellant – assessee on a particular date or then received by him on a particular date. There is no finding that because of a particular provision in any law it is deemed to have been received by him on a particular date. As such, we find the application of mind by the CESTAT as also by the Appellate Authority unsustainable. The fact of not tendering or delivery of order-in-original to the assessee and its impact is lost site of by the learned authorities.

Accordingly, both the orders are quashed and set aside and the matter is placed back for fresh consideration before the Commissioner (Appeals) of Central Excise at Nagpur. The said authority shall look into all relevant records and provisions of law and take suitable decision on the request of the appellant for condonation of delay.

It is made clear that Shri Phadnis, learned counsel has pointed out that the said application has been filed by way of abundant precaution and without prejudice to the contention that actually there is no delay in filing that appeal.

Central Excise Appeal is thus partly allowed and disposed of. However, in the facts and circumstances of the case, there shall be no order as to costs.

JUDGE **JUDGE**

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