

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

C.E.A No.31 of 2015

DATE: 31.03.2015

Between:

M/s. Integrated Rubian Exports Ltd.,.

Aleppy.

... Appellant

And

Commissioner of Customs,

Custom House,

Visakhapatnam.

... Respondent

This Court made the following:

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

C.E.A.No.31 of 2015

JUDGMENT: (per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This appeal is sought to be preferred and admitted against the judgment and order of the learned Tribunal dated 11.08.2011, on the following suggested questions of law:

1. Whether on the facts and in the circumstances of the case, the service of the Order-in-Original on the ex-employee of the Appellant while the Appellant had become sick and was closed down can be considered as proper service?
2. Whether the Hon'ble Tribunal was correct in law in reckoning the date of receipt of the Order-in-Original by the Appellant as 17.02.2004 and not 19.01.2009 ignoring prevailing facts and surrounding circumstances at the relevant period of time?

The appellant before us was aggrieved by the order dated 10.02.2004 passed by the Assistant Commissioner of Customs, Custom House, Visakhapatnam. It preferred an appeal before the Commissioner of Customs, Central Excise and Service Tax (Appeals), Visakhapatnam. The first appellate authority found that a copy of the Order-in-Original was despatched on 12.02.2004 and the same was acknowledged by the company on 17.02.2004. The first appellate authority enquired into that, and found that the appellant had full knowledge of receipt of the Order-in-Original. The appeal was preferred after inordinate delay of nearly five years. As such, on the ground of limitation, the first appeal was dismissed. Against this order, the appellant before us approached the learned Tribunal, the order of which is impugned before us. The learned Tribunal did not find any error in the decision of the first appellate authority and dismissed the appeal as the first appeal was sought to be preferred beyond the condonable period. The Supreme Court has settled the law on this issue and the learned Tribunal has relied on and followed a decision of the Supreme Court on this issue.

Now, Mr. S. Ravi, learned Senior Advocate, appearing for the appellant, in the aforesaid factual back ground, contends that the appellant for some time was under sick and it was referred to Board for Industrial and Financial Reconstruction, and at that time there was no authorized person to receive the

Order-in-Original. But, this factual aspect was not examined either by the first appellate authority or by the Tribunal.

In the grounds of appeal, we do not find that the findings of the first appellate authority with regard to service of notice are sought to be assailed on the ground of perversity or non consideration of any material. In the appeal, our jurisdiction is very limited as we decide only the substantial question of law after having found *prima facie* case. On appreciation of facts with regard to communication of the Order-in-Original and applying the law on the issue going by fact, the Tribunal came to a fact finding that the first appeal was sought to be preferred beyond the condonable period and dismissed the same. In view of the appreciation of fact and finding thereon, we do not find any element of law to decide in this appeal.

We accordingly dismiss the appeal. There will be no order as to costs.

Pending miscellaneous petitions, if any, shall also stand dismissed.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

Date: 31.03.2015

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