IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL (LODGING) NO.34491 OF 2022

Harjeet Singh Makkar] .. Appellant

Vs.

1. Union of India, through the Secretary,]
Ministry of Law and Justice,]
Department of Legal Affairs, Mumbai]
]
2. Commissioner of Customs (Prevention), Mumbai] .. Respondents

Mr. Brijesh Pathak, with Mr. Shrey Lodha, for the Appellant.
Mr. Vijay H. Kantharia, with Mr. Ram Ochani, for the Respondents.

CORAM : DHIRAJ SINGH THAKUR &
VALMIKI SA MENEZES, J.J.

DATE : 23RD NOVEMBER, 2022.

P.C. : { Per Valmiki SA Menezes, J. }

1. This is an Appeal filed u/s. 130 of the Customs Act, 1962 against the order dated 3rd March 2022 passed by Customs, Excise & Service Tax Appellate Tribunal, Regional Bench, Mumbai, dismissing the appellant's application, being Application Diary No.850562022 (Appeal Diary No.850732022), seeking condonation of delay of 2,159 days in filing an appeal under Section 129A of the Customs Act, 1962.

2. Appeal is admitted on the following substantial question of law :-

"Whether the Tribunal grossly erred in dismissing the Miscellaneous Application seeking condonation of delay, when the appellant under a bonafide belief had filed Revision Application before Revisionary Authority ?"

3. By consent of the parties, Appeal is taken up for final disposal.

4. It is the appellant's case that Order-in-Original dated 27th May 2014 was passed against the appellant by the Joint Commissioner of Customs (Preventive), R & I Division, Mumbai, imposing penalty of Rs.7,12,267/-, under Section 112(b) of Customs Act, 1962, against which the appellant preferred an appeal, in terms of Section 128A of the said Act, being Appeal No.MUM-CUSTM-PAX-APP-522 & 523/15-16, before the Commissioner of Customs (Appeals), Mumbai – Zone III, Mumbai, who dismissed the said appeal on 3rd December 2015. It is further the appellant's case that on the legal advise, and bonafidely believing such advise, he filed a Revision Application before the Central Government, under the provisions of Section 129DD of the Act and pursued the said revision application, bonafidely believing that he was before the correct forum, for agitating his case against the penalty order passed by the authorities below.

5. By an order dated 6th December 2020, the Additional Secretary to Government of India, Department of Revenue, rejected the appellant's revision application holding the same as not maintainable for lack of jurisdiction. The order passed by the Revisional Authority does not enter into the merits of the appellant's case.

6. Realizing that the appellant had approached the wrong forum, he filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Branch at Mumbai bearing Appeal Diary No.850732022 and in the said appeal, the appellant filed an application seeking condoation of delay of 2,159 days, in terms of sub-section (5) of Section 129A of the Act. The main ground on which the application to condone the delay was filed was that the delay was unintentional as majority of the time was spent before the revisional forum under a bonafide belief that revision application against the order of the Commissioner of Customs (Appeals) was the correct forum under the Customs Act to agitate his case against levy of penalty.

7. Mr. Brijesh Pathak, learned counsel appearing for the appellant contends that the impugned order dated 3rd March 2022 passed by the Customs, Excise & Service Tax Appellate Tribunal, Mumbai, Regional Bench, *(CESTAT)* in Appeal Diary No.850732022 is bad in law inasmuch as the appellate authority has failed to apply the principles of Section 14 of the Limitation Act or the principles analogues thereto to the case at hand. The learned counsel for the appellant further submits that the conclusions arrived at by the appellate forum, that no proper reasons were set out in the application to demonstrate that the appellant was under the bonafide belief that he was before the correct forum i.e. the revisional authority, are wholly erroneous, without considering the specific facts and circumstances set out in the application. He further contends that in terms of the provisions of sub-

section (5) of section 129A of the Act, the reasons stated in the application for condonation of delay constitute sufficient cause for not presenting the appeal within limitation.

8. Mr. Pathak relies upon the judgment of the Hon'ble Supreme Court in *Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and Ors., along with connected matter*[1], to buttress his submission that the principles analogues to Section 14 of the Limitation Act, 1963 only require the appellant to establish that both the prior and subsequent proceedings are civil proceedings prosecuted by the same party; that the prior proceedings had been prosecuted with due diligence and in good faith; and that failure of the prior proceeding was due to defect of jurisdiction. His contention is that the appellant has fulfilled all these predicates in his application for condonation of delay by showing sufficient cause.

9. Per contra, Mr. Vijay Kantharia, learned counsel for the respondents has opposed the contentions raised by the appellant and supported the findings arrived at by the CESTAT in the impugned order and further submits that the impugned order has been passed after taking into consideration all the circumstances under which the application had been filed. He further supports the findings in the impugned order that sufficient cause was not shown by the appellant, and taking us through the application for

1 *(2008) 7 SCC 169*

condonation of delay and statements made therein, and contends that there are no facts pleaded in the application to show that the revision proceedings were prosecuted diligently and in a bonafide manner.

10. Having heard learned counsel for the parties and considering the averments made in the application for condonation of delay filed before the CESTAT, we are of the considered view that the appellant has made out a case of sufficient cause for condoning the delay. It is apparent from the record that the appellant, on legal advise, preferred a revision application before the Central Government under the provisions of Section 129DD of the Customs Act. Appellant prosecuted the said revision application before the Revisional Authority until order dated 7th December 2021 was passed by the Revisional Authority, which is, without entering into the merits of the matter, holding that it had no jurisdiction to proceed with the revision application.

11. It is only after the order of rejection of the revision application passed, the appellant obtained a certified copy thereof on 13th December 2021 and lodged Appeal before the CESTAT on 12th January 2022, along with the concerned application for condonation of delay, setting out therein the facts and circumstances under which the appeal came to be filed beyond the period of limitation. This itself would constitute sufficient cause under Section 129A(5) of the Act.

12. The Hon'ble Supreme Court in the case of *Consolidated Engineering Enterprises (supra)*, in particular para 22 thereof, states as under :-

> *"22. The policy of the section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding, which, by reason of some technical defect, cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act, it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, i.e. a court having no jurisdiction to entertain it, but also where he brings the suit or the application in*

the wrong court in consequence of bona fide mistake or (sic of) law or defect of procedure. Having regard to the intention of the legislature, this court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded."

13. In terms of the ratio laid down by the Apex Court, as above, it is clear that an element of a mistake is inherent in the invocation of Section 14 of the Limitation Act and these provisions are intended to provide a relief against the bar of limitation in cases of selection of a wrong forum.

14. Applying the principle laid down in *Consolidated Engineering Enterprises (Supra)* to the facts of the present case, we find that the reasons given by the appellant in approaching a wrong forum, i.e. the revisional forum, instead of the appellate forum are sufficient cause for condoning the delay in filing appeal before the CESTAT. Accordingly, we pass the following order :-

(i) The impugned order dated 3rd March 2022 passed by the Customs, Excise & Service Tax Appellate Tribunal, Regional Bench, Mumbai, in Application Diary No.850562022 (Appeal Diary No.850732022) is set aside. Delay of 2,159 days in filing the appeal, being Appeal Diary No.850732022, is condoned.

(ii) We direct the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai to register the Appeal preferred by the appellant, being Appeal Diary No.850732022, and proceed to hear the said appeal on its own merits.

(iii) Substantial question of law is answered in the above terms.

(iv) Appeal is disposed of.

[VALMIKI SA MENEZES, J.] **[DHIRAJ SINGH THAKUR, J.]**