

Prajakta Vartak

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

CUSTOM APPEAL (L.) NO. 39170 OF 2022

Zulfikar Abdul Rashid Khan ..Appellant
Vs.
Union of India & Anr. ..Respondents

**AND
CUSTOM APPEAL NO. 16 OF 2023**

Zulfikar Abdul Rashid Khan ..Appellant
Vs.
Union of India & Anr. ..Respondents

Mr. Brijesh Pathak for Appellant.
Mr. Brijesh Kantaria with Mr. Ram Ochani for Respondent.

**CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : JULY 25, 2023**

Oral Judgment (Per G. S. Kulkarni, J.) :-

1. These appeals under Section 130 of the Customs Act, 1962 challenge a common order dated 19 July, 2022, passed by the Customs, Excise & Service Tax Appellate Tribunal, Mumbai (for short, “CESTAT”) whereby interim applications filed by the appellant praying for condonation of delay in filing the appeals have been rejected, only on the reasoning as set out in paragraph 2.1 of the impugned order which reads thus:-

“2.1 From the applications, it is evident that the applicant is seeking indulgence of this Tribunal for condoning the delay of 1708 days in filing these appeals. No justifiable ground has been stated in the applications filed.”

2. This appeal is admitted on the following questions of law:-

“a. In the facts and circumstances of the case and in law, whether the Ld. CESTAT erred in dismissing the Miscellaneous Application, seeking condonation of delay, bearing Appeal Diary No. 852552021, when the Appellant under a bona fide belief had filed the Revision Application before the Revisionary Authority ?

b. Whether the Ld. CESTAT was bound to condone the period undergone before the Revisionary Authority under a bona fide belief and the Appellant had acted diligently in pursuing such remedy ?”

3. It is the case of the appellant that he is carrying on business in sale of motor vehicles, its parts and accessories. A show cause notice dated 12 August, 2011 was issued to the appellant to show cause as to why penalty should not be imposed upon him under Section 112(b) of the Customs Act, 1962. The show cause notice was adjudicated by an Order-in-Original dated 24 July, 2014 passed by the adjudicating authority, whereby a penalty of Rs.2,00,000/- came to be imposed on the appellant.

4. The appellant had assailed the Order-in-Original in an appeal before the Commissioner of Customs (Appeals). The appellate authority by an order dated 16 March, 2016, rejected the appeal and by not interfering the Order-in-Original. It is the case of the appellant that under a bonafide belief, the appellant had approached the revisionary authority

to challenge the said order passed by the Commissioner of Customs (Appeals). He filed the revision application against the said order before the revisional authority on 09 May, 2016. On 14 December, 2020, the revisional authority rejected the revision application of the appellant on the ground that the revisional authority lacked jurisdiction to decide the revision application as the order passed by the Commissioner of Customs (Appeals) in appeal, was an order, which was appealable before the CESTAT. Disposing of the said revision application, an order came to be passed on 06 January, 2021. Thereafter the appellant immediately i.e. on 22 January, 2021 filed an appeal against the order in appeal before the CESTAT, along with an application praying for condonation of delay of the time spent by the appellant before the wrong forum i.e. the revisional authority.

5. The CESTAT, however, by the impugned order dated 19 July, 2022, dismissed the interim application filed by the appellant praying for condonation of delay on the sole ground as noted by us above. Copy of the order was received by the appellant on 12 August, 2022 and thereafter the appellant has approached this Court in the present proceedings by challenging the interim orders passed by the CESTAT.

6. Mr. Pathak, learned counsel for the appellant in assailing the

impugned order would contend that the sole ground, as set out in the impugned order to reject the appellant's delay condonation application, is completely untenable considering the facts of the case. It is submitted that the CESTAT has not taken into consideration that the appellant was bonafide pursuing the revision application before the revisional authority and in these circumstances, certainly, considering the settled principles of law, that Section 14 of the Limitation Act would save the limitation, in the appellant pursuing the appropriate remedy of an appeal before the CESTAT. Thus, according to Mr. Pathak, the tribunal could not have rejected the interim applications filed by the appellant for condonation of delay without examining such clear facts as brought out on record. It is submitted that a serious prejudice is caused to the appellant also for the reason that the said order is passed *ex-parte* and without granting an opportunity of hearing to the appellant. In supporting such contentions, Mr. Pathak has placed reliance on a decision of the co-ordinate Bench of this Court in **Harjeet Singh Makkar Vs. Union of India**¹. Mr. Pathak would also bring to our notice that in similar circumstances, the CESTAT in the proceedings of **Shailesh D. Rediji Vs. Commissioner of Customs (Prev.), Customs Defect Appeal Diary No. 870332021**, condoned the delay of 2004 days. He has also placed reliance on another decision of the CESTAT in **Taufeeq Abdul Rasheed Qureshi Vs. Commissioner of**

¹ 2022(12) TMI 322 – Bombay High Court

Customs (Preventive), being Miscellaneous Order No. M/85468/2021 dated 21 October, 2021 in which delay of 1657 days was condoned in similar circumstances.

7. On the other hand, Mr. Kantaria, learned counsel for the respondents, while opposing the proceedings, would not dispute that on the only reasoning as set out in the impugned order, the appellant's applications are rejected by the CESTAT.

Analysis:-

8. Having heard learned counsel for the parties and having perused the record, we are of the clear opinion that there is much substance in the contentions as urged on behalf of the appellant.

9. At the outset, it is also required to be noted that the impugned order passed by the CESTAT was passed in the absence of the appellant as seen from the appearance as noted in the impugned order.

10. It is also required to be noted that assailing the order in appeal passed by the Commissioner of Customs (16 March, 2016), the appellant being under a bonafide belief, had approached the revisional authority, by filing a revision application on 09 May, 2016 which came to be rejected

after a period of almost more than 4 years i.e. on 14 December, 2020. In assailing the orders passed by the Commissioner (Appeals), the appellant was not sleeping over his rights. The revisional authority was however of the opinion that the revision proceedings as filed by the appellant were not maintainable, as the appropriate remedy for the appellant was to file an appeal before the CESTAT. In this view of the matter, the revisional authority disposed of the revisional proceedings, permitting the appellant to avail of the remedy of an appeal before the CESTAT. Thus the position is that the appellant's challenge to the order passed by the Commissioner of Customs (Appeals) has remained to be adjudicated, as such challenge could only be adjudicated before the appropriate forum having jurisdiction namely the CESTAT.

11. In the above circumstances, when a litigant like the appellant bonafide adopts a remedy which is not appropriate remedy, Section 14 of the Limitation Act would certainly come to the aid of such litigant.

Section 14 of the Limitation Act reads thus:-

“14. Exclusion of time of proceeding bona fide in court without jurisdiction.—

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

- (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;
- (b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;
- (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

(emphasis supplied)

12. The object and purpose of Section 14 of the Limitation Act is that the litigant ought not to suffer by a delay is caused in bonafide and in good faith pursuing the proceedings against orders which adversely affect the litigant before a wrong forum. It is in these circumstances, the law would provide that the proceedings would be required to be held maintainable by the delay being condoned by application of Section 14, so that the litigant is not kept away from the doors of the appropriate forum, on the ground that the proceedings are time barred. If the doors of the appropriate forum are closed on such ground, it would amount to travesty of justice and defeating the very right of a party to approach the proper

forum as also rendering the object of Section 14 of the Limitation Act otiose.

13. In our opinion, this is a fit case where the appellant having pursued the revisional proceedings and that too bonafide and in good faith, as it is not a case of the revenue that there was any other intention on the part of the appellant in pursuing the revision proceedings the delay in filing the appeal ought to have been condoned by the CESTAT. Thus, these factual circumstances being quite apparent, as also the clear position of applicability of Section 14 of the Limitation Act, to the facts of the case was completely overlooked by the CESTAT, in adjudicating the interim application filed by the appellant, in dismissing the appellant's interim applications on the meager reasoning as noted by us above.

14. Mr. Pathak would be justified in placing reliance on the decision of a co-ordinate Bench of this Court in similar circumstances referring to the decision of the Supreme Court in **Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and Ors.**² had allowed the writ petition by setting aside the orders of the tribunal and directing that the appeal of the appellant in the said case to be decided on its own merits. We also note that the tribunal in similar cases namely *Shailesh D. Rediji*

² (2008) 7 SCC 169

Vs. Commissioner of Customs (Prev.) (supra) as also in *Taufeeq Abdul Rasheed Qureshi Vs. Commissioner of Customs (Preventive)* (supra), had considered such legal position and in the circumstances, had allowed the interim applications.

15. We accordingly answer the questions in favour of the appellant and against the Revenue in terms of the above discussion.

16. In the aforesaid circumstances, the present appeals are required to be allowed by the following order:-

ORDER

- i. The impugned order dated 19 July, 2022 passed by the Customs, Excise & Service Tax Appellate Tribunal, Mumbai is quashed and set aside.
- ii. The appeals filed by the appellant are directed to be registered before the CESTAT and to be adjudicated on their own merits and without an objection as to limitation.
- iii. No costs.
- iv. The appellant is directed to appear before the tribunal at the first instance on 21 August, 2023.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]