

CEA no. 59 of 2017 (O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CEA no. 59 of 2017 (O&M)

Date of Decision : 13.02.2019

Commissioner Central Excise, Jammu & Kashmir

...Appellant

Versus

Steel Strips Ltd

...Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE LALIT BATRA

Present : Mr.Sharan Sethi, Advocate for the appellant

Mr. Akshay Bhan, Sr. Advocate with

Mr. Alok Mittal, Advocate for respondent

MAHESH GROVER, J.(ORAL)

This appeal by the Commissioner, Central Excise, Jammu & Kashmir has been filed impugning the action of the Tribunal in declining rectification of its own order as the application moved for the purpose was beyond the period of six months prescribed. The delay in doing so was 7 days over and above the prescribed period of six months.

The questions of law that has been framed before us needs to be extracted herebelow:-

“A) Whether or not the CESTAT has the power to condone delay in filing rectification application as per Section 35 C of the Central Excise Act and has therefore wrongly dismissed the rectification application of the Appellant on the ground of limitation only?

B) Whether or not the CESTAT has followed the law laid down by the Hon'ble Supreme Court in “**Sunita Devi Singhania Hospital Trust vs. UOI 2009 (233) ELT 295 SC**” and which judgment clearly holds that the Tribunal has power to condone the delay for the principles of Natural Justice?”

We have gone through the judgment relied upon by the appellant i.e “**Sunita Devi Singhania Hospital Trust vs. UOI 2009 (233) ELT 295 SC**” and noticed the observations made by the Hon'ble Supreme Court in para 19, 21, 27 and 29, which are reproduced herebelow:-

“19. It is true that the period of limitation specified in terms of Sub-Section (2) of [Section 129\(B\)](#) of the Customs Act is required to be observed but the Tribunal failed to notice that it has inherent power of recalling its own order if sufficient cause is shown therefor. The principles of natural justice, which in a case of this nature, in our opinion, envisage that a mistake committed by the Tribunal in not noticing the facts involved in the appeal which would attract the ancillary and/or incidental power of the Tribunal necessary to discharge its functions effectively for the purpose of doing justice between the parties, were required to be complied with.

20. xxx

21. For the aforementioned purpose the provisions of limitation specified in Sub-section (2) of

Section 129 B of the Customs Act would not be attracted.

We, however, do not mean to lay down a law that such an application can be filed at any time. If such an application is filed within a reasonable time and if the Court or Tribunal finds that the contention raised before it by the applicant is prima-facie correct, in order to do justice, which is being above law, nothing fetters the judges hands from considering the matter on merit.

22 to 26 xxxx

27. It may be true, as has been contended by Mr. Abhichandani, learned senior counsel that [Section 14](#) of the Limitation Act, 1963 will have no application in view of the fact that provisions governing limitation are contained in the [Customs Act](#). It is so for in a matter of this nature the Tribunal was required to consider the application filed by he appellant which was filed within a reasonable time. It should have also considered that the appellant had been bonafide pursuing its remedies before this Court.

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29. The Tribunal did not consider the matter on merit. The Tribunal failed to take into consideration that, ipso-facto, in a case of this nature provisions of [Section 129B](#) of the Customs Act as such has no effect. Label of an application is not decisive for consideration by the Tribunal as to whether a case has

been made out to hear the application on merit, particularly, having regard to the grounds set out therein.”

There is thus little room for doubt that the Tribunal would have inherent power to recall its order (rectify) if sufficient cause is shown for the delay in approaching it.

In the impugned order the Tribunal has observed that it has no power to condone the delay in view of the decision rendered by the Karnataka High Court.

Clearly the Tribunal fell in error by not noticing the decision of the Hon'ble Supreme Court recorded in Sunita Devi Singhania's case (supra). We, therefore, set aside the impugned order and remit the matter back to the Tribunal to decide the issue afresh in the light of above.

Questions of law framed, are answered as above.

Disposed of.

(Mahesh Grover)
Judge

13.02.2019
rekha

(Lalit Batra)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No