

The Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
Appeal No.E/198/2009; E/ROA/10042/2016
[Arising out of OIA No.KRS/215/VAPI/2008, dt.31.07.2008, passed by Commissioner (Appeals),
Central Excise & Service Tax, Vapi]

M/s Aafloat Textiles (India) Ltd Appellant

Vs

Commissioner of C.Ex. & Service Tax, Vapi Respondent

Represented by:

For Appellant: Shri P.P. Jadeja, Consultant

For Respondent: Shri L. Tendupatra, A.R.

For approval and signature:

Hon ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No
3. Whether their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

CORAM:

HON BLE MR. P.K. DAS, MEMBER (JUDICIAL)

Date of Hearing/Decision: 29.01.2016

Order No. A/10067 / 2016, dt.29.01.2016

Per: P.K. Das

This appeal is taken up for hearing in terms of the judgment dt.19.10.2015 of the Hon'ble Bombay High Court in Writ Petition No.8773 of 2014 [Afloat Textiles (India) Ltd Vs Union of India & Ors]. By the said judgment, the Hon'ble High Court set aside the Tribunal orders dt.29.05.2009 and 11.04.2014 and directed that the appeal of the Appellant be restored to the file of the Tribunal for being disposed of afresh on merits in accordance with law, uninfluenced by any earlier findings and corrections.

2. After hearing both the sides and on perusal of the records, I find that the Commissioner (Appeals) rejected the appeal filed by thye Appellant as barred by limitation. By the impugned order, the Commissioner (Appeals) observed that as revealed from the Panchnama dt.14.02.2007, the Adjudication order had been pasted on the main gate of the office of the Appellant in the presence

of the Panchas and security guard of the Appellant on 14.02.2007 showing that the impugned order had been received by the Appellant on 14.02.2007. The Appellant filed this appeal before Commissioner (Appeals) on 03.09.2007, which is beyond the period of six months.

3. The main contention of the learned Counsel on behalf of the Appellant is that the Appellant Company was wound up by the order of Hon'ble High Court during the relevant period. It is further submitted that the Commissioner (Appeals) erroneously proceeded on the basis that the security guard of the Appellant was present on 14.02.2007. As the Appellant Company was wound up, the security guard present was of the Bank and not of the Appellant. I find that this submission of the learned Counsel is supported by the observation of the Hon'ble High Court in judgment dt.19.10.2015. The relevant portion of the said judgment is reproduced below:-

"9. After hearing both sides, we find that the Joint Commissioner's order which was challenged is dated 1st April, 2007. That was challenged before the Commissioner (Appeals) Central Excise & Customs, Vapi. Before the Commissioner, the argument was that the appeal is not barred by limitation and the petitioner had no knowledge of the order of the Joint Commissioner. It was in winding up inasmuch as the BIFR had recommended in the month of November, 2006 / January 2007, that the petitioner be wound up. This recommendation / reference of the BIFR was treated as a suo moto petition for winding up by this Court and that is how the proceedings commenced and this Court eventually passed the order of winding up. It is during this time that it is stated that all the operations and activities at the factory came to standstill. There was closure notice and the factory was closed. It is, therefore, impossible for the petitioner to have been aware of an order stated to be pasted on its factory gate. Once all operations were closed and the factory was not operating, then, the appeal filed before the Commissioner (Appeals) could not be said to be barred by limitation."

4. The learned Counsel submits that on 07.07.2007, it came to the knowledge of the Appellant of the service of the order and the Appellant filed appeal within the stipulated period. Hence, there was no delay of filing of appeal before Commissioner (Appeals). I find that the submission of the learned Commissioner is supported by the finding of the Hon'ble High Court insofar as during the material period, the Appellant Company was under BIFR. There is no material available on record that the Appellant was aware of service of Adjudication order as on 14.02.2007 and therefore, the impugned order passed by the Commissioner (Appeals) cannot be sustained. It would be construed that there was no delay of filing appeal before the Commissioner (Appeals).

5. As the Commissioner (Appeals) has not decided the appeal on merit, the matter is required to be remanded to the Commissioner (Appeals).

6. In view of the above discussion, the impugned order is set aside. The Commissioner (Appeals) is directed to decide the appeal on merit. The appeal is allowed by way of remand.

7. The Appellant also filed the application for restoration of appeal. Since as per the order of Hon'ble High Court, the appeal is restored, the ROA application is dismissed as infructuous.

(Dictated & Pronounced in Court)

(P.K. Das)
Member (Judicial)