

2013 (2) ECS (121) (Tri - Mum)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST REGIONAL BENCH AT MUMBAI**

Interport Logistics Pvt.Ltd.

Versus

Commissioner of Customs (General), Mumbai

APPEAL No. C/COD – 318/2011

APPEAL NO: C/102/2011

(Arising out of order – in – Original No. 27/2010/CAC/SLM dated 04.03.2009 passed by the Commissioner of Customs, (General), Mumbai)

Date of Hearing: 4.12.2012

Date of Decision: 4.12.2012

Interport Logistics Pvt. Ltd.

Appellant

Versus

Commissioner of Customs (General),
Mumbai

Respondent

Appearance:

Shri Anil Balani, Advocate for Appellant

Shri V C Kohle, Dy.Commissisoner (AR) for Respondent

CORAM

HON'BLE SHRI P.R. CHANDRASEKHARAN, MEMBER (TECHNICAL)

HON'BLE SHRI ANIL COUDHARY, MEMBER (JUDICIAL)

ORDER NO. M/38513/CSTB/C-I
A/390/13/CSTB/C-I

“The Hon’ble High Court of Kerala in the case of Chellapan vs. Additional Collector of Customs 1978 (2) ELT (J547) (Ker.) considered the question regarding interpretation of Section 153 of the Customs Act which deals with service of orders, summons, etc. issued under the Act. The said section prescribes three methods of service – (1) by tendering the order; (2) by sending the order by registered post; (3) by displaying the order on the notice board of the Custom House. The hon’ble High Court held that the methods indicated under Section 153 are alternative methods, any one of which could be attempted.” [Para 5]

Per: Shri P.R. Chandrasekharan, Member (Technical)

1. The condonation of delay application has been filed for condoning the delay of 264 days in filing of the appeal.
2. The ground alleged for the delay is that there had been no valid service of the order – in – original No. 27/2010/CAC/SLM dated 04.03.2009 issued on 05.03.2010 by the Commissioner of Customs (General), New Custom House, Mumbai. It is further stated that the order was served on Shri Kishore Chandra, Director of the appellant – firm on 05.03.2010 who received the order in his individual capacity and did not inform the other Director who was handling the matter and the order was misplaced by him at his residence. It was only on 23/10/2010 he has handed over the said order, after which action was initiated for filing the appeal. It is also alleged that the company has not received the order from the department at its registered address. An affidavit filed by Shri Kishore Chandra is also enclosed along with the application.
3. The learned counsel for the appellant submits that as per the provisions of the Customs Act, 1962 the order has to be served by sending through registered post to the address of the appellant and only such service can be considered as “proper service”. He relies on the decision of this Tribunal in the case of Davo laboratories vs. Commissioner of Central Excise, Indore 2009 (242) ELT 471 (Tri. Del.); Wellman Hindustan Ltd. vs. Commissioner of Central Excise, Thane – I 2010 (261) ELT 706 (Tri. - Mumbai) and Triveni Glass Ltd. vs. Commissioner of

Central Excise, Allahabad 2011 (272) ELT 187 (All.) and accordingly prays for condoning the delay.

4. The learned AR appearing for the Revenue submitted a copy of the letter confirming service of the order to Shri Kishore Chandra, No. Kardex C – 633 on 05.03.2010 with directions to surrender the CHA licence and the Customs passes at the earliest and, therefore, submits that COD application does not merit consideration.
5. We have carefully considered the submissions made by both the sides.
 - 5.1. In the affidavit filed by Shri Kishore Chandra it is stated that he received order on 05.03.2010 by hand from the CHA Section in New Custom House, Mumbai. It is also stated in the affidavit that the order was received in his personal capacity and the company has not received the order from the department at its registered address. From the letter of the department, as also from the affidavit it is clear that the impugned order was served on the appellant on 05.03.2010. The order is addressed to M/s. Interport Logistics Pvt. Ltd., CHA No. 11/1167 with direction to surrender the original CHA licence and all the Customs pass of their employees. It is a direction to the CHA and, therefore, it cannot be said that the Director of the appellant – firm received the same in his personal capacity. Even when an order is sent through registered post, some individual present in the office has to receive the order and, therefore, it does not make any difference as to who received the order. In the instant case, it is the Director of the company who has received the order and the Director is a senior person in the company. It is further noticed that the ground alleged in the appeal memorandum that Shri Kishore Chandra had misplaced the order in his house and it was only on 23/10/2010 the order was handed over to the other Director is not corroborated from the averments made in affidavit filed by Shri Kishore Chandra. The reliance placed by the appellant on the Wellman Hindustan Ltd. case, cited supra, is not relevant to the facts of the present case. In that case it was held that the person who received the order should disclose his identity and should state that he has received the same on behalf of the company. Similarly, in the case of Triveni Glass case, cited supra, service was not established by any documentary evidence except for a noting made by an employee of the department themselves. In the Davo Laboratoies case penalty was imposed on the partners of the appellant – firm and also the appellant – firm and, therefore, it was held that receipt of the order by the partner will not amount to service on the appellant – firm. In the present case the facts are distinct and distinguishable. The order relates to revocation of CHA licence of the appellant and not with regard to any

penal liabilities on the employees of the firm. Secondly, the person who received the order is a Director of the appellant – firm and he has received the order on behalf of the appellant – firm. In view of the above position the reliance placed on the case laws cited by the appellant does not help.

- 5.2. The Hon'ble High Court of Kerala in the case of Chellapan vs. Additional Collector of Customs 1978 (2) ELT (J547) (Ker.) considered the question regarding interpretation of Section 153 of the Customs Act which deals with service of orders, summons, etc. issued under the Act. The said section prescribes three methods of service – (1) by tendering the order; (2) by sending the order by registered post; (3) by displaying the order on the notice board of the Custom House. The hon'ble High Court held that the methods indicated under Section 153 are alternative methods, any one of which could be attempted. Therefore, if service is complete by one method it is not necessary to resort to the service again through the other methods. In the present case, the service of the order has been completed by tendering of the order to Shri Kishore Chandra in person who is the Director of the appellant – firm and therefore, the service is complete on 05.03.2010 itself. The grounds alleged in the appeal, namely, the order was misplaced and subsequently retraced is not borne out from the affidavit filed by Shri Kishore Chandra. Other than the above, no explanation satisfactory to this Bench has been offered. Condonation of delay is subject to satisfactorily explaining the delay in filing of the appeal, which has not been done in the instant case.
6. Accordingly, we hold that there is no satisfactory explanation coming out in the application for condonation of delay. Therefore, we dismiss the Condonation of Delay application. Consequently the appeal also gets dismissed.

(Pronounced in Court)