REPORTABLE

IN THE SUPRME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 5631-5632 OF 2015

[Arising out of SLP (Civil) Nos. 22905-22906 of 2014]

SARAL WIRE CRAFT PVT. LTD. … Appellant

Versus

COMMISSIONER CUSTOMS, CENTRAL EXCISE & SERVICE TAX, & ORS. … Respondent

O R D E R

Delay condoned.

Leave granted.

The Appellant is aggrieved by the fact that the right of Appeal bestowed on the assessee by the Central Excise Act, 1944 (in short 'the Act') has virtually been rendered nugatory since, successively, its Appeal has been declined consideration on merits, having instead held as time-barred.

Succinctly stated, the Appellant had sought to take advantage of a Notification granting exemption from payment of Central Excise Duty as well as Additional Duty of Excise for a period of ten years. This moratorium/exemption has been granted by the Central Government with the objective of giving a fillip to the industrialization of the newly created State of Uttarakhand. The dispute is whether the Appellant's factory/unit is situated on land which is covered by the aforesaid Notification, but we are not immediately concerned with this contentious issue in theses Appeals. It appears that on 28.7.2011, the Assistant Commissioner, Customs and Central Excise Division, Haldwani had concluded the proceedings and hearings in respect of the show cause notice dated 25.3.2011 issued to the Appellant. The Appellant's contention is that after a passage of eight months an order came to be passed by the said Officer on 30.3.2012 holding that the Appellant was not eligible for the exemptions postulated in the said Notification; a duty of Rs.3,45,629/- along with penalty of a like amount was imposed under Section 11A of the Act. We reiterate that in these Appeals we are not concerned with the legality of that Order.

The Appellant filed an Appeal against the said Adjudication Order in the Office of the Commissioner (Appeals), Customs and Central Excise (Meerut-II) asserting that consequent upon the initiation of the recovery proceedings by the

Department, the Appellant learned for the first time, on 26.7.2012, of the passing of the aforesaid Order dated 30.3.2012. The case put forward is that the Adjudication Order dated 30.3.2012 appears to have been served on an employee of the Appellant, named Sanjay, who according to the Appellant was a 'Kitchen boy' employed on daily wages, and was avowedly not authorized to deal with communications to and from the Appellant; he had unauthorisedly affixed the stamp/seal of the Appellant on the some documents purporting to establish the service of the Adjudication Order, on 3.4.2012. Accepting the service to have been properly effected on the Appellant, the Commissioner (Appeals) dismissed the Appeal filed by the Appellant by an Order dated 28.9.2012 on the ground that it was time-barred. The period was held to have started to run from 3.4.2012 and since the Appeal had been filed on 22.8.2012 it was held to be not maintainable, being beyond the prescribed period of sixty days. The merits of the Appeal were not gone into at all.

This decision was challenged before the Customs Excise and Service Tax Appellate Tribunal, New Delhi, which accepted the Department's version that the Adjudication Order had been duly served/delivered on the Appellant on 3.4.2012; since the Appeal came to be filed on 22.8.2012, the dismissal on the ground of limitation was held to be in consonance with the Act.

Thereafter, the Appellant approached the High Court of Uttarakhand at Nainital, which opined that an Appeal is a creature of statute and therefore its preferment beyond the period permitted by the relevant statute, reduced it to a futile exercise. Even this endeavour of the Appellant was of no avail to it as the High Court was of the opinion that there was no power to condone the delay beyond the statutory period. We may underscore the important facet of the Appeal, viz., that the Appeal filed by the Appellant has not been considered on merits at all. The Appellate Authorities as well as the High Court failed to keep in perspective the essential issue - namely - to ascertain the date from which limitation was to be calculated.

Learned counsel for the Appellant has consistently relied upon Section 37C of the Act, which is reproduced for facility of reference:

> "37C. Service of decisions, orders, summons, etc.- (1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served,-
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> (a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due, to the person for whom it is intended or his authorized agent, if any;
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> (b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;
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> (c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice."

Sub-section (a) of Section 37C (supra) states that any decision, order, summons or notice may either be sent by registered post with acknowledgement due to the person for whom it is intended or his authorized agent. If this mode of service is unsuccessful then service can be effect by affixation. It is not the case of the Department that it simultaneously also dispatched the Order to the Appellant by registered post with acknowledgment due.

It is an anathema in law to decide a matter without due notice to the concerned party. Every effort must be taken to meaningfully and realistically serve the affected party so as not merely to ensure that he has knowledge thereof but also to enable him to initiate any permissible action. The Appellant justifiably submits that it was statutorily impermissible for the Respondents to serve the Adjudication Order on a "kitchen boy", who is not even a middle level officer and certainly not an authorized agent of the Appellant. The version of the Appellant that it learnt of the passing of the Adjudication Order dated 30.3.2012 only when, in the course of the recovery proceedings, the Department's officials had visited its unit, is certainly believable. The fact that, firstly, the Order had not been passed in the presence of the Appellant, so as to render its subsequent service a formality, and secondly, that the Order came to be passed after an inordinate period of eight months should not have been ignored. This fact should not have been lost sight of by the Authorities below as it has inevitably led to a miscarriage of justice. The Inspector of the Department should have meticulously followed and obeyed the mandate of the statute and tendered the Adjudication Order either on the party on whom it was intended or on its authorized agent and on one else. It is not the Respondents' case that Shri Sanjay was the authorized agent. Even before us, despite several opportunities given, the Respondents have failed to file their response to the Special Leave Petitions so as to controvert the asseveration of the Appellant that Shri Sanjay on whom the decision was tendered was a mere daily wager 'kitchen boy' and that the Appellant had no knowledge of the passing of the Adjudication Order. We are also informed that the recoveries envisaged in the Adjudication Order have already been effected.

It is in these circumstances that we are of the clear conclusion that a miscarriage of justice has taken place, in that the Authorities/Courts below have failed to notice the specific language of Section 37C(a) of the Act which requires that an Order must be tendered on the concerned person or his authorized agent, in other words, on no other person, to ensure efficaciousness. We must immediately recall the decision in Taylor vs. Taylor (1875) 1 Ch. D 426, rendered venerable by virtue of its jural acceptance and applicable for over a century. It was approved by the Privy Council in Nazir Ahmad v. King Emperor (1935-36) 63 IA 372 and was subsequently applied in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh AIR 1954 SC 322, State of UP v. Singhara Singh AIR 1964 SC 358, **Babu Verghese** v. Bar Council of Kerala (1999) 3 SCC 422 and more recently in Hussein Ghadially v. State of Gujarat (2014) 8 SCC 425. As observed by this Court in **Babu Verghese**, "it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all." The Inspector who ostensibly served the copy of the Order should have known the requirements of the statute and therefore should have insisted on an acknowledgement either by the Appellant or by its authorized agent. The Inspector had a statutory function to fulfil, not a mere perfunctory one. The Appeals are accordingly allowed and the impugned Orders are set aside. In the facts obtaining before us, the computation of the period would commence at least from the date on which the Appellant asserts knowledge of its existence, i.e. on 26.7.2012. So computed, the Appeal filed before the Commissioner (Appeals) on 22.8.2012 would be within the prescribed period of 60 days and should, therefore, have been entertained on merits. It is ordered accordingly. The Appellant shall appear before the Commissioner (Appeals) on the forenoon of 3.8.2015. The Appeal shall then be taken up and heard on its merits. There shall be no order as to costs.

……………………………..J.
(VIKRAMAJIT SEN)

………………………………..J.
(SHIVA KIRTI SINGH)

New Delhi
20th July, 2015.