NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 22 of 2009

Union of India, Through Commissioner, Central Excise and Customs, Central Excise Bhawan, Dhamtari Road, Tikarapara, Raipur, Chhattisgarh 492001

---- Appellant

Versus

M/s. Raipur Lamps (P) Ltd. Shed No. 26 & 29, Urla Industrial Area, Raipur Chhattisgarh.

---- Respondent

For Appellant	:	Shri Maneesh Sharma, Advocate.
For Respondent	:	None

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board

Per Navin Sinha, Chief Justice

17/06/2015

1. The present appeal was filed on 15.6.2009 under Section 35-G of the Central Excise Act, 1944, aggrieved by order dated 26.11.2009 in Appeal No. E/3690/2006-SM(BR) passed by the Principal Bench, Customs, Excise and Service Tax Appellate Tribunal (hereinafter called 'the Tribunal').

2. The appeal was admitted for hearing on 30.6.2009 and notices issued to the Respondent-Company. The order sheet dated 15.1.2010 reveals that the notice was returned unserved with an endorsement that the firm was closed 2-3 years back and its whereabouts were not known. Liberty was granted to take fresh steps for notice as also for dasti service. On 9.3.2010, again time was granted to take steps for notice by payment of fresh process fee. The Appellant still took no steps for dasti service. On 8.7.2010, delay in filing process fee for notice was condoned. On 22.9.2010, again dasti service was permitted awaiting service report. Service report was received on 8.6.2011 to the same effect as earlier that the Company had been closed and further whereabouts were not known. Fresh service of notice ordered again was also returned unserved on 4.12.2013 with the same endorsement. The matter has therefore remained pending since 15.6.2009 awaiting proper steps by the Appellant for service on the Respondent.

3. Shri Sharma appearing on behalf of Appellant submits that a short adjournment may be granted and he shall take all necessary steps for service of notice on the Respondent. He has entered appearance in the matter only in October, 2013.

4. We have considered the request of Shri Sharma and are not inclined to accede to the same.

5. A counsel has to depend and act in accordance with the instructions from its client. It is the duty of the client to give all necessary information to its counsel so that the matter can be taken up for consideration expeditiously. In the present case, we are satisfied that the department is not at all serious about pursuing the matter. We are not inclined to keep the matter pending as a statistic in the Court.

6. As far back as 15.1.2010, the Appellant was aware that the company had closed down and shifted base. No steps were taken whatsoever by the Appellant-Department to ascertain the whereabouts of the Respondent and instruct its counsel. Notwithstanding the service report, repeated notices were filed for issuance of notice at the same address fully aware of the futility of the same. It is not the case of the Appellant that it took steps to ascertain fresh and correct address.

7. If the Appellant became aware as far back as 15.1.2010 that the Respondent-Company had closed office and shifted base, it could have easily made enquiry from the Registrar of Companies also. Liberty was granted more than once for dasti service which has not been taken advantage of. There is no explanation coming forth why the Appellant did not consider it prudent to file application for substituted service by publication.

8. In any event, the amount involved in this appeal is Rs. 1,03,292/-. Shri Sharma very fairly informs us that according to the prevailing government instructions, departmental appeals are to be filed only when the value involved is above Rs. 10,00,000/-.

9. The appeal is dismissed for reasons attributable to the Appellant itself in not being serious about pursuing the matter.

Sd/-	Sd/-
(Navin Sinha)	(P. Sam Koshy)
CHIEF JUSTICE	**JUDGE**

Amit