HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 34 of 2015

Pawan Engineering Works , A Proprietor Concern, Through: Proprietor A. P. Shukla, Aged About 62 Years, S/o Shri R. P. Shukla, Office At A-7, Mahavir Goshala Parisar, 1st Floor, K. K. Road, Modhapar, Raipur, Chhattisgarh

---- Appellant

Versus

1. Commissioner Of Custom And Central Excise & Service Tax , Raipur, Central Excise Building, Dhamtari Road, Tikrapara, Raipur, Chhattisgarh
2. M/s Larsen & Toubro Limited, Engineering Construction And Contract Division, 71 Park Street, Post Box No. 9010, Kolkata, 700016

----Respondents

For Appellant:-	Shri Parag Kotecha and Shri Anand Shukla, Advocates.
For Respondent No.1:-	Shri Maneesh Sharma, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per Navin Sinha, Chief Justice

5/10/2015

1. The present appeal arises from order dated 2.1.2015 dismissing Service Tax Appeal No.57327/2013 for non-compliance of order dated 27.5.2014 granting waiver only in respect of penalty while observing that in case of failure to deposit, the appeal itself would stand dismissed. The Appellant came to this Court in Tax Case No.21/2014 challenging the order dated 27.5.2014, which was dismissed on 19.6.2014. However, six months' further time was granted to deposit the amount as directed by the Tribunal. I.A. No.1/2015 has been filed to condone delay of 90 days in preferring the present appeal against order dated 2.1.2015.

2. Learned Counsel for the Appellant submits that the Appellant is in

grave financial difficulties. It was also sought to be urged that it was not liable to pay any service tax dues, the liability for which rested with Respondent No.2 alone.

3. The delay in filing the appeal was bona fide for the reasons mentioned in the application for condonation.

4. Learned Counsel for Respondent No.1 opposed condonation of delay. It was submitted that the order of this Court in Tax Case No.21/2014 has attained finality and was never questioned by the Appellant. This Court, sitting in coordinate jurisdiction, cannot reconsider the matter on merits.

5. The order dated 19.6.2014 in Tax Case No.21/2014 having attained finality, in coordinate jurisdiction, it shall be wholly inappropriate for us to consider the matter on merits.

6. Even otherwise, we have gone through the pleadings contained in the application for condonation of delay. It contains no explanation worth the name much less any sufficient cause for condoning the delay except for a bald assertion that the Appellant was not aware of the order passed by the Tribunal and learnt in August only from the Department whereafter, it contacted its Counsel and therefore the delay was bona fide.

7. The Appellant is an organization. It is difficult to believe that if there was a demand raised against it for Rs,5,30,21,372/- with interest, it was so negligent in the protection of its own financial and commercial interests that it never sought to be in touch with its counsel to obtain progress reports or through its representatives for keeping itself up to date with regard to the status before the Tribunal. In any event, it is not the case of the Appellant that the order dated 19.6.2014 in Tax Case No.21/2014 was passed behind its back and that it was not aware of the same. The explanation for the delay is

completely fanciful and merits no consideration.

8. Since we have declined to condone delay, the appeal automatically fails and is accordingly dismissed.

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

Priya