IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

C.E.Appeal.No. 6 of 2015 ()

AGAINST THE ORDER/JUDGMENT NO.20393/2015 IN ST/COD/24023 IN ST/23667/2014-DB of CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,BANGALORE DATED 19.02.2015

APPELLANT(S):/APPELLANT

M/S. ACUMEN CAPITAL MARKET (INDIA) LTD.
(FORMERLY KNOWN AS M/S.PENINSULAR CAPITAL MARKET LTD.)
XL/8052, 3RD FLOOR, S.T.REDDIAR & SONS BUILDING,
VEEKSHANAM ROAD, ERNAKULAM, KOCHI-35.

BY ADVS.SRI.ANIL D. NAIR
SRI.R.SREEJITH
SMT.C.S.SULEKHA BEEVI
SMT.ROSIE ATHULYA JOSEPH
SRI.M.BALAGOPAL

RESPONDENT(S):/RESPONDENT

THE COMMISSIONER OF CENTRAL EXCISE
CUSTOMS AND SERVICE TAX
COCHIN-CCE BUILDING, C.R.BUILDING
I.S.PRESS ROAD, ERNAKULAM, KOCHI-682 018.

BY ADV. SRI.SAIBY JOSE KIDANGOOR
BY SRI.THOMAS MATHEW NELLIMOOTTIL,
SENIOR PANEL COUNSEL

THIS CENTRAL EXICISE APPEAL HAVING COME UP FOR ADMISSION ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CEA 6/15

APPENDIX

APPELLANT'S ANNEXURES

ANNEXURE-A : COPY OF ORDER (ORIGINAL) NO.56/2009 ST DATED 17.11.2009 OF THE RESPONDENT.

ANNEXURE-B : COPY OF ORDER DATED 20.06.2014 OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX (APPEALS), COCHIN.

ANNEXURE-C : COPY OF APPEAL BEFORE THE CUSTOS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL.

ANNEXURE-D : COPY OF PETITION FOR CONDONATION OF DELAY BEFORE THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL.

ANNEXURE-E : COPY OF ORDER DATED 29.12.2011 OF THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL.

ANNEXURE-F : COPY OF ORDER OF TRIBUNAL DATED 19.02.2015 OF THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL.

//TRUE COPY//

PA TO JUDGE.

jg

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

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CEA No.6 of 2015

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Dated this the 24th day of March, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Admitted. Learned senior panel counsel takes notice for the respondent.

2. On consent of parties, this matter is heard finally.

3. Appellant filed an appeal before the Appellate Tribunal challenging imposition of penalty and on issue of levy of service tax. The period prescribed for filing such an appeal is 120 days. The appeal was out of time. It was delayed by 69 days. The appellant through the affidavit pleaded that the Managing Director of the Company was out of station in connection with business activities and such official issues led to the non-institution of the appeal within the prescribed time. The Tribunal has the power to condone the delay. That power, which is

specifically reflected in Section 35B(5) of the Central Excise Act, 1994, envisages discretionary power in that regard. Though the Tribunal has stated in the impugned order that the non-availability of the Managing Director is not shown to have resulted in the business of the appellant to a standstill, and therefore, there is no reason to condone the delay, we think that the totality of the grounds raised in the appeal ought to have also been relevant consideration for viewing the situation as one where ends of justice would be satisfied, if delay is condoned on terms. This is because, if that course is adopted, that would pave way for better dispensation of justice by extending an opportunity of hearing to the appellant and the establishment to have a proper disposal of the matter relating to service tax on merits, rather than on default.

For the aforesaid reasons and in the result, the impugned order of the Tribunal is set aside and the application seeking condonation of delay in instituting the appeal before the Tribunal will stand allowed on condition that the appellant remits to the Revenue an amount of ₹10,000/- (Rupees ten thousand only) as costs within a period of ten days from today. If receipt of such remittance is presented before the Tribunal, the appeal of the appellant will be considered further, in accordance with law. This appeal is ordered accordingly.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)

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