

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI PCHALY

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

C.E.Appeal.No. 13 of 2015

AGAINST THE ORDER IN ST 27839/2013 of CUSTOMS, EXCISE & SERVICE TAX APP.
TRIBUNAL, BANGALORE, DATED 03-12-2014

APPELLANTS/APPELLANTS/ASSESSEE:

SOCEITY FOR PROMOTION OF NATURE TOURISM AND SPORTS (SPORTS)
INDIRA GANDHI ROAD, WILLINGTON ISLAND, COCHIN-685 003.

BY ADV. SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP ADMN

RESPONDENT/RESPONDENT:

THE COMMISSIONER OF CENTRAL EXCISE
CUSTOMS & SERVICE TAX, COCHIN-18.

R1 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC, CB EX

THIS CENTRAL EXICISE APPEAL HAVING COME UP FOR ADMISSION ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: A TRUE COPY OF SERVICE TAX APPEAL FILED BEFORE THE APPELLATE TRIBUNAL ALONG WITH THE APPLICATION FOR CONDONATION OF DELAY DATE'S 4.10.2013.

ANNEXURE B: A TRUE COPY OF ADDITIONAL AFFIDAVIT FILED BY THE APPELLANT AS DIRECTED BY THE TRIBUNAL.

ANNEXURE C: ORDER PASSED BY THE APPELLATE TRIBUNAL ST/COD/28333/2013 IN APPEAL NO.ST/27839/2013-DB DATED 3.12.2014 AND ISSUED ON 12.12.2014.

// TRUE COPY //

P.A.TO JUDGE

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

C.E.A.No.13 of 2015

Dated this the 29th day of July, 2015

JUDGMENT

Antony Dominic, J.

Heard the counsel for the appellant and the learned Standing Counsel for the respondent.

2. This appeal is filed against Annexure C order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, challenging the Order In Original No.21-2011 dated 29.12.2011 passed by the respondent. The appellant filed Annexure A appeal before the Tribunal. Along with the appeal, the appellant had also sought condonation of delay of 505 days in filing the appeal. The Tribunal was not satisfied with the reasons stated in the affidavit and, therefore, on being directed the appellant filed Annexure B, additional affidavit explaining the delay and seeking its condonation. However, the application was rejected by the Tribunal as per Annexure C order, mainly on the basis that the reason stated in the affidavit filed along with Annexure A appeal and which is stated in Annexure B appeal are contrary in nature. It is aggrieved by Annexure C order, this appeal is filed.

3. Having heard counsel for the parties, we are inclined to think that what Annexure B additional affidavit filed by the appellant contains is essentially an explanation of the reasons which were vaguely and briefly stated in affidavit filed along with Annexure A appeal and we are not inclined to think that the reasons stated in the affidavits are of such a nature that the reasons stated therein are contrary warranting its rejection. In such circumstances, we are not in a position to approve the reasoning of the Tribunal as contained in Annexure C order.

4. Further, having gone through the order in original against which the appeal is filed, we find that the order creates huge financial liability on the appellant. On the materials now available, we cannot conclude that the appellant can be accused being guilty of delay or laches that was deliberately caused by it justifying dismissal of their application for condonation of delay, to deny them an opportunity to get their case decided on merits.

5. In such circumstances, we are inclined to set aside Annexure C order and to condone the delay. Accordingly, we set aside Annexure C order and condone the delay as prayed for by the appellant. The

Tribunal is directed to consider the appeal on merits and in accordance with law.

Appeal is disposed of.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
SHAJI P. CHALY
JUDGE

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