IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

CMA.No.1384 of 2015
and
MP.No.1 of 2015

Kovaai Silicates
No.14/96B Sundakamuthur Main Road
Kuniyamuthur Post,
Coimbatore-641 008. ...Appellant/Appellant

Vs

The Customs Excise and Service Tax
Appellate Tribunal
South Zonal Bench I Floor
Shastri Bhavan Annexe, Haddows Road,
Chennai-8.

2.Commissioner of Central Excise
Race Course Road,
Coimbatore-18 ...Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 35-G of the Central Excise Act against the final order dated 03.06.2013 made in Appeal No.E/15/2005 by the 1st respondent against the order of the Commissioner of Central Excise (Appeals), Coimbatore - 18 dated 04.10.2004 and made in A.No.119/2004 - CEX and order in appeal No.290/2004-CE against the order of the Deputy Commissioner of Central Excise, Coimbatore III Division, Coimbatore, dated 30.05.2004 and made in C.No.V/28/15/1/2003 adjn. and order in orginal No.115/2004 during the period 1998-1999 and 1999-2000.

For Appellant : Mr.S.Gurumoorthy

For Respondents : Mr.A.P.Srinivas

JUDGMENT
(Delivered by K.B.K.VASUKI, J)

The assessee is the appellant herein. This Civil Miscellaneous Appeal is filed against the order of the Tribunal by raising the following substantial questions of law :

(i)Whether in the facts and circumstances of the case, the order of the Tribunal dismissing the appeal for non-prosecution was correct or not?

(ii)Whether in facts and circumstances of the case, the order of the Tribunal dismissing the appeal without giving one more opportunity was correct or not? and

(iii)Whether the Tribunal is right in dismissing the appeal without going into the merit of the case as required under law?

2.An investigation was conducted at the appellant premises by the Head Quarters Preventive Unit of the erstwhile Coimbatore Commissioner head and the same led to issuance of show cause notice dated 30.10.2003 demanding a sum of Rs.2,27,025/- towards duty on Sodium Silicates cleared to M/s.Hari Soap industries on job work basis during the periods from 1998-1999 to 1999-2000 under Sections 11(A)(1) and 38(A) of Central Excise Act along with interest applicable under Section 11(AB)(1) and penalty under Section 11 (AC) of Central Excise Act. The appellant filed its reply on 22.12.2003 and attended personal hearing. Whereas the second respondent/Commissioner of Central Excise vide his order dated 30.05.2004 demanded a sum of Rs.2,27,025/- towards duty and imposed equal amount as penalty and also demanded interest. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Appeals, who vide order dated 04.10.2004, rejected the appeal and confirmed the order of the Second Respondent/Commissioner of Central Excise. The correctness of the order passed by the Commissioner of Appeals was challenged by way of further appeal before the first respondent/Customs, Excise and Service Tax Appellate Tribunal raising serious grounds. The case was before the Tribunal repeatedly adjourned and there were totally 8 adjournments, out of which, 3 adjournments were at the instance of the assessee on different grounds. The Tribunal on the hearing date on 03.06.2013 rejected the request for further adjournment and dismissed the appeal for non prosecution. Hence, the present Civil Miscellaneous Appeal by the assessee before this Court.

3.The learned counsel for the appellant has drawn our attention through the adjournment letters enclosed at pages 52 to 63 of the typed set of papers filed herein. The perusal of the particulars contained therein would reveal that the case was between 15.06.2011 and 03.06.2013 adjourned on 8 occasions out of which the adjournments granted at the instance of the assessee was on three occasions. The assessee through his learned counsel on record, submitted due applications on all the three occasions, seeking adjournment for different reasons and on the remaining occasions, the case was taken up on the dates other than the hearing dates and stood adjourned to future date and the same was then intimated to the counsel on record at Chennai. However, the case was from 23.01.2013 adjourned to 11.03.2013 on the ground that the advocate's mother-in-law expired and he had to attend 10^{th} day ceremony on 23.1.2013 and the case on 23.01.2013 was adjourned to 03.06.2013 due to Advocates' boycott. Thereafter, an adjournment was sought for on the ground that the counsel was not available by four weeks and the said request was rejected saying that similar ground was put forth for seeking adjournment on earlier occasion and that shows, the appellant was not interested in proceeding with the matter. By observing so, the Tribunal dismissed the appeal for non prosecution.

4.As rightly argued by the learned counsel for the appellant/assessee, considering the number of adjournments already granted in the case and the number of occasions on which the case was adjourned at the instance of the appellant/assessee and having regard to the different reasons, which were compelling in nature for which the adjournment were sought for, the Tribunal ought not to have dismissed the appeal for non-prosecution and ought to have considered granting one more opportunity to the appellant/assessee to prosecute its case. There is absolutely no reason to arrive at a conclusion that the assessee was not interested in prosecuting the appeal. The first respondent/Tribunal by dismissing the appeal by observing so deprived the assessee of its right to prosecute the appeal on merits. As such, the impugned order calls for interference by this Court and the matter be remanded back for fresh consideration and the substantial questions of law are accordingly answered in favour of the assessee.

5.In the result, the civil miscellaneous appeal is allowed by setting aside the order of the first respondent/Tribunal and the matter is remanded back for fresh disposal on merits and in accordance with law. The appellant/assessee is directed to co-operate with the Tribunal for earlier disposal of the appeal, without seeking further adjournments. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Customs Excise and Service Tax
Appellate Tribunal
South Zonal Bench I Floor
Shastri Bhavan Annexe, Haddows Road,
Chennai-8.

2. Commissioner of Central Excise
Race Course Road,
Coimbatore-18

3. The Deputy Commissioner of Central Excise,
Coimbatore III Division,
Coimbatore.

4. The Commissioner of Central Excise (Appeals)
Coimbatore III Division,
Coimbatore - 18.

1 CC to Mr.S.Venkatachalam, Advocate SR.No. 37852

1 CC to Mr.A.P.Srinivas, Advocate SR.No. 37556

JSV (CO)
PSI (12.08.2015)