IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.08.2015

Coram

The Honourable Mr.Justice V.RAMASUBRAMANIAN
and
The Honourable Mr.Justice T.MATHIVANAN

C.M.A.No.1702 of 2015
and M.P.No.1 of 2015

Shardlow India Ltd.
Huzur Gardens, Sembium, Chennai. ... Appellant/Appellant

Vs.

1.Commissioner of Central Excise,
Chennai-II Commissionerate
692, M.H.U. Complex, Anna Salai,
Nandanam, Chennai.

2.Customs, Excise & Service Tax Appellate
Tribunal, Shastri Bhavan, Annexe
Building, I Floor, 26, Haddows Road,
Chennai. ... Respondents/Respondents

Appeal under Section 35G of the Central Excise Act, 1944, against the Final Order No.40880 of 2014 dated 28.11.2014 passed in Appeal No.E.42448/2013-DB on the file of the CESTAT, the second respondent herein.

For Appellant : Mr.P.R.Renganath

For Respondent : Mr.A.P.Srinivas
Special Panel Counsel

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O R D E R
(Order of the Court was made by V.Ramasubramanian, J.)

This Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944, by the assessee, questions the correctness of the order of the CESTAT dismissing an application for condonation of delay.

2.Heard Mr.P.R.Renganath, learned counsel for the appellant. Mr.A.P.Srinivas, learned Senior Panel Counsel, takes notice for the respondents.

3.As against an Order-in-Original passed on 22.02.2010 by the Deputy Commissioner of Central Excise, making a demand of excise duty together with education cess, etc., the appellant filed a statutory appeal before the First Appellate Authority. The appeal was dismissed by an order dated 15.04.2013.

4.In filing an appeal as against the said order before the CESTAT, there was a delay of 132 days. The appellant sought condonation of delay on the ground that an employee, who was looking after the proceedings, had resigned from the services of the company. But, the Tribunal dismissed the application for condonation of delay on the ground that the delay was not satisfactorily explained. Hence, the present appeal.

5.It is seen from the affidavit filed by the appellant before the Tribunal that the appellant sought condonation of delay on the ground that one of the employees by name Mr.K.Satish Kumar had resigned. It was the positive case of the appellant that despite their efforts to retain the employee, the employee left.

6.The order passed by the Tribunal shows that the Tribunal did not disbelieve the stand taken by the appellant in total. But, the Tribunal proceeded on the footing that the resignation of Satish Kumar had no relevance. This approach appears to be completely vitiated. The letter of resignation and the reply issued by the concerned employee are all filed before the Tribunal. There is no reason to suspect the explanation given by the appellant. Hence, the appeal deserves to be allowed.

7.Accordingly, this Civil Miscellaneous Appeal is allowed, the impugned order is set aside and the application for condonation of delay is allowed. The Tribunal shall take up the appeal for disposal. No costs. Consequently, M.P.No.1 of 2015 stands closed.

Sd/-
Asst.Registrar(CSII)

/true copy/

Sub Asst. Registrar

sra

To

1.Commissioner of Central Excise,
Chennai-II Commissionerate
692, M.H.U. Complex, Anna Salai,
Nandanam, Chennai.

2.Customs, Excise & Service Tax Appellate
Tribunal, Shastri Bhavan, Annexe
Building, I Floor, 26, Haddows Road,
Chennai.

+1 cc to Mr.A.P Srinivas, Advocate sr.43027

C.M.A.No.1702 of 2015

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