IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.02.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH

C.M.A. NO. 3210 OF 2006

The Commissioner of Central Excise
Central Excise Commissionerate
No.1, Williams Road
Tiruchirappalli 620 001. ...Appellant/Appellant

- Vs -

1. Customs, Excise & Service
Tax Appellate Tribunal
Shastri Bhavan Annexe Building
No.26, Haddows Road, Chennai 600 006.

2. Commissioner of Central Excise (Appeals)
No.1, Williams Road, Tiruchirappalli.

3. M/s.Tamil Nadu Asbestos (Pipes),
Mayanur (P.O.,), Karur. ...Respondents

Appeal filed under Section 35-G of the Central Excise Act, against the order dated 19.4.06 passed by Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.277/2006, against the order of the Commissioner of Central Excise (Appeals) No.1, Williams Road, Cantonment, Tiruchirapalli, dated 14.09.2005 and made in A.No. 102/2005 (TRY) / Old No.23/2004, against the order of the Assistant Commissioner of Central Excise, Central Excise Division, Karur, dated 28.11.2003 and made in C.No.IV/16/22/2002-3 Tax.

For Appellant	:	Mr. S.Mohanamurali Standing Counsel
For Respondents	:	Mr.S.Murugappan - R3 R1 Tribunal

JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in dismissing the appeal filed by it, the Revenue is before this Court by filing the present appeal. Mr.S.Murugappan, learned counsel entered appearance for the third respondent. By consent of both sides, this appeal is admitted on the following substantial questions of law raised by the appellant :-

> "i) Whether the Tribunal is right in not considering the settled law as laid down by the Hon'ble Apex Court in the case of State of Haryana - Vs - Chandramani (2002 (143) ELT 249 (SC)) that when the State is an appellant, the expression "sufficient cause" should be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay in order that merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal?
>
> ii) Whether the Tribunal is right in refusing to condone the delay without considering the fact that the issue pertaining to the payment of service tax was sub judice before Hon'ble Supreme Court and SLP's are pending?
>
> iii) Whether the Tribunal is right in holding that the Department is trying to take advantage of a sub-sequential decision when there is no final verdict rendered by the Hon'ble Supreme Court and SLP's are pending?
>
> iv) Whether the Tribunal is right in not considering the facts pleaded as sufficient cause for the purpose of condonation of delay especially when the appeal has been preferred by the Department and the same has been done to protect the interest of Revenue and in public interest?"

2. The appellant herein filed appeal before the Tribunal along with a petition for condonation of delay of 37 days in filing the appeal against the order of the original authority, viz., Commissioner (Appeals) in Order in Appeal No.142/2005 dated 14.9.05, wherein the Commissioner (Appeals), by relying on the decision of the Supreme Court in Commissioner of Central Excise - Vs - LH Sugar Factories Ltd. (2005 (187) ELT 5 (SC)) allowed the appeal in favour of the 3rd respondent/assessee. Against the said order, the Department filed appeal before the Tribunal, however, with a delay of

37 days.

3. It is seen from the order of the Tribunal that the reason for the Department filing the appeal with a delay of 37 days is in view of the fact that the Supreme Court has admitted similar matters in CCE, Vadadora-I Gujarat Carbon & Industries Ltd. (Civil Appeal No.1618/2005) and Chennai III Commissionerate – Vs – Sundaram Fasteners Ltd. (Civil Appeal No.7144/2005). It is further evident from the said order of the Tribunal that though the order in original was originally accepted by the Department, in view of the pendency of similar issue before the Apex Court in C.A.No.1618 of 2005 and since huge amounts were involved, the Department wanted to pursue the legal remedy by way of appeal and as a consequence delay of 37 days occurred.

4. However, the Tribunal, by relying upon the decision in the case of Ballarpur Industries Ltd. V. CCE (1993 (68) ELT 631 (Tribunal), wherein it was observed that after long lapse of several years, if one is allowed to pursue the appeal, it would open the Pandora's Box, held that the reason for condonation of delay is not acceptable since there was no sufficient cause shown preventing the appellant from filing the appeal in time. Aggrieved by the said order of the Tribunal, the Revenue is before this Court by filing the present appeal.

5. Heard Mr.S.Mohanamurali, learned standing counsel appearing for the Revenue and Mr.S.Murugappan, learned counsel appearing for the assessee. This Court perused the order passed by the Tribunal and also the other documents available in the typed set of documents.

6. From a perusal of the documents available on record, it is clear that the delay of 37 days which has occurred is purely administrative in nature, as has been stated by the Department before the Tribunal. The finding of the Tribunal that the appellant has not shown sufficient cause, which prevented them in filing the appeal, does not merit acceptance in view of the decision of the Supreme Court in Collector, Land Acquisition – Vs- Mst. Katiji & Ors. (1987 (167) ITR 471 (SC)), wherein the Supreme Court has held that the expression "sufficient cause" employed by the Legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice. Further, the Supreme Court also held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay".

7. In a recent judgment of the Supreme Court in 2013 (5) CTC 547 (Esha Bhattacharjee V. Managing Committee of Raghunathpur, Nafar Academy and others), the Apex Court has enunciated the following guidelines to be adopted while deciding matters relating to condonation of delay :-

> "15. From the aforesaid authorities the principles that can be broadly be culled out are:
>
> (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an Application for condonation of delay, for the Courts are not supposed to legalise injustice but are obliged to remove injustice.
>
> (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
>
> (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
>
> (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the Counsel or litigant is to be taken note of.
>
> (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
>
> (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the Courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
>
> (vii) The Concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.
>
> (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former Doctrine of Prejudice is attracted, whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
>
> (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the

Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the Application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of Law of Limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are :

(a) An Application for Condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the Courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An Application for Condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."

8. The parameters as laid down in para 15 (i), (ii), (iii), (vi),

(viii), (ix) and (xii), by the Supreme Court in the above case, can be invoked for deciding the present appeal. Accordingly, the substantial questions of law are answered in favour of the appellant/Department and against the 3rd respondent/assessee. Accordingly, this appeal is liable to be allowed.

9. In an identical circumstance, this Court, by order dated 06.02.2015, in C.M.A.No.3215 of 2006, following the above-said judgment allowed the appeal filed by the Revenue, thereby condoned the delay.

10. Accordingly, following the above-said decision of the Supreme Court and that of this Court, this appeal is allowed. The order passed by the Tribunal is set aside and the delay in filing the appeal before the Tribunal is condoned. The Tribunal is directed to take up the appeal and decide the same on merits.

Sd/-
Assistant Registrar(LA)

//True Copy//

Sub Assistant Registrar

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To

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Central Excise Commissionerate
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Tax Appellate Tribunal
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No.26, Haddows Road, Chennai 600 006.

3. The Assistant Commissioner of Central Excise
Central Excise Division, Karur.

1 CC to Mr. S.Mohanamurali, Advocate SR.No. 8098

1 CC to Mr.S.Murugappan, Advocate, SR.No. 8116

C.M.A. NO. 3210 OF 2006

UG (CO)
PSI(03.03.2015)