IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

C.E.A. NO. 96 of 2015

Between:

M/s Emmar Logistics Pvt. Limited,
D.No. 30-7-17, 1st Floor, Women's Indian Association Mansion,
Dabagardens, Visakhapatnam, Andhra Pradesh.

….Appellants

Vs.

The Commissioner of Central Excise
Visakhapatnam-I Commissionerate, New Central Excise Building,
Port Area, Visakhapatnam- 530 035

…. Respondent

DATE OF JUDGEMENT PRONOUNCED: 26.08.2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE G.CHANDRAIAH
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

***HON'BLE SRI JUSTICE G.CHANDRAIAH**
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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…. Respondent

!Counsel for the Appellants: Smt K. Udaya Sri

Counsel for the Respondents: Sri PSP Suresh Kumar

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>Head Note:

? Cases referred:

<u>HON'BLE SRI JUSTICE G.CHANDRAIAH</u>
AND
<u>HON'BLE SRI JUSTICE CHALLA KODANDA RAM</u>
<u>C.E.A. NO. 96 OF 2015</u>

<u>JUDGMENT</u>: (per Hon'ble Sri Justice **CHALLA KODANDA RAM**)

Aggrieved by the final order dated 6.1.2015 passed by the Appellate Tribunal, Bangalore in ST/26879/2013-DB dismissing the delay condonation petition filed by the appellant and consequently dismissing the appeal, the appellant came before us under Section 35 G of the Central Excise Act, 1944, as made applicable to service tax.

2. The facts are not in dispute. The Commissioner of Central Excise

Visakhapatnam-I Commissionerate passed the order in Original on 25.6.2012 holding that the appellant is engaged in the service of providing logistics and in that context the service tax is required to be paid. The assessee had incurred expenses of 'Freight Charges' and 'Transport Charges' and thereby liable to pay service tax for the services falling under the category "Transportation of goods by Road Services" in terms of Section 65 (105) (zzp) read with Section 65(50b) of the Finance Act, 1994. The order dated 25.6.2012 was corrected by issuing a corrigendum on 17.7.2012 and the same was received by the appellant on 19.7.2012. In normal circumstances, the appellant is entitled to file an appeal before the CESTAT, Bangalore on or before 18.10.2012. However, the appeal came to be filed on 17.6.2013 along with a delay condonation petition, wherein the delay of 242 days has occurred.

3. The Tribunal by its order dated 6.1.2015 held that the delay is not property explained and as such there are no reasons to condone the delay. Accordingly, the delay condonation petition was dismissed and consequently the appeal was dismissed.

4. Smt. K. Udaya Sri, learned counsel for the appellant strenuously contended that the Appellate Tribunal failed to consider the detailed affidavits filed on behalf of the appellant for condonation of delay by one Sri G. Kasi Visweswara Rao, who was Manager (Finance) and also the affidavit of one

Sri M. Pardha Raghunadh, Director of the Company and incharge of the operations of the Company. She also submits that huge demand of Rs. 44,98,692/- was made though there is no taxable service in the facts of the present case and the same is not sustainable. Further, sum equal to the tax was levied as penalty in addition to fastening of interest under Section 75 of the Finance Act. She further submits that on merits the appellant is likely to succeed in appeal and a valuable right of appeal ought not to have been denied to the appellant on a technical breach of the appellant's inability to file appeal within the prescribed time. She prays to set aside the order of the Tribunal.

5. Sri P.S.P. Suresh Kumar, learned Standing Counsel for Central Excise Department, opposed the plea of the appellant.

6. In the affidavit filed in support of the delay condonation petition, Sri G. Kasivisweswar Rao, Manager (Finance) stated that at relevant point of time, i.e., during June-July 2012, he was passing through a phase of severe mental stress and for that reason he had informed the management of his decision to leave the job and start his own consultancy. In fact, he left the job and before leaving, he made an effort to obtain documentary evidence for filing the appeal in relation to the purchase value of iron ore and the freight charges. He could not obtain required data and thereafter, he left the job on 30th September 2012. He also did not inform the management that appeal was to be filed on or before 25.6.2012. He further stated that

the delay was only on account of his suffering from mental stress at relevant point of time. He prayed for condonation of delay as the fault lies with him. Likewise, the Director Sri M.Pardha Raghunadh also by an affidavit stated that Sri G. Kasivisweswara Rao, Manager (Finance) was incharge and responsible for the matters relating to the taxation and he had left the job on 30.9.2012 without informing about the order dated 25.6.2012. It is only when the company received an intimation demanding the tax amount to be paid, they came to be aware of the fact of adjudication order having been made on 25.6.2012. Efforts were made to enquire with Sri G. Kasivisweswara Rao, who informed that the order was received and the same was available in files. Though efforts were made to search for the same by Sri E.M. Jones, who was looking after the affairs left by Sri G. Kasivisweswara Rao, he could not trace the same. Further Sri E.M. Jones was also suffering from certain heart disease and he was taking treatment for cardiovascular disease. As filing of appeal was getting delayed, to show their bonafides, the company paid a sum of Rs. 7,89,549/- towards service tax demanded and filed the appeal. Thus, finally the Director of the appellant company prayed for condonation of delay as the substantial right is involved in the appeal. No counter affidavit was field by the respondent department.

7. The details of the affidavit filed have been set out by us only for the reason that there is an elaborate description for the delay was placed before the Tribunal. There is no contra material placed before the Tribunal denying the averments made by the appellant by way of two affidavits. It may be noted that no useful purpose and no benefit would accrue to the appellant by not filing appeal. On the contrary, non-filing of appeal within time would foist a huge liability up to Rs. 100 lakhs. The appellant being business concern, in normal circumstances, would not be presumed to have acted negligently nor could be assumed to have delayed filing of appeal deliberately. The circumstances under which the Manager (Finance) left the company and some other persons made efforts to trace the papers to enable them to file appeal is a plausible explanation, which ought to have been considered by the Tribunal. We are also not impressed with the objection pointed out by the learned Standing Counsel that Sri G. Kasivisweswara Rao, who was alleged to have left the company services again joined in 2014 and the same would improbablise the case of the appellant. In this context, we are of the opinion that the affidavit for condonation of delay is filed by the Director of the company for and on behalf of the company and it is only as a matter of supporting affidavit, an affidavit of the person concerned, who was in fact involved in the affairs of the company at relevant point of time was also filed. This is one circumstance, which would probablise the genuineness on the part of the appellant in desiring to pursue their remedy of appeal against the order in original dated

25.6.2012. In normal circumstances we would have remanded the matter to the Tribunal for consideration of these facts, but however, considering that the order in Original came to be passed on 25.6.2012 and the appeal itself came to be filed before the Tribunal on 17.6.2013, we deem it appropriate to exercise the powers of appeal under Section 35 G and condone the delay of 242 days in filing the appeal subject to the appellant depositing costs of Rs. 50,000/- (Rupees Fifty Thousand Only) in favour of the Commissioner of Central Excise Visakhapatnam –I Commissionerate-respondent herein, within three weeks from the date of receipt of a copy of this order. On costs being paid, the appeal stands restored to file, which shall be dealt with by the Appellate Tribunal in accordance with law. We make it clear that we have left the question of waiver of pre deposit to be considered by the Appellate Tribunal in accordance with the law.

8. With the above observation, the Central Excise Appeal is allowed. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

Date: 26.08.2015
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