THE HON'BLE SRI JUSTICE DILIP B.BHOSALE

AND

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.E.A.No. 18 of 2015

P.C: (per the Hon'ble Sri Justice A.Ramalingeswara Rao)

This Central Excise Appeal is directed against the order, dated 27.09.2012 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (for short 'the Tribunal') in COD No.219/2011 in Customs Appeal No.1956/2011.

The appellant herein filed an appeal before the Tribunal against the order, dated 21.10.2010 passed in Order-in-Appeal No.89/2010 (H-II) Cus, together with an application to condone the delay of about 175 days in filing the same. The said application was dismissed by the impugned order in Miscellaneous Order No.743/2012 and Final Order No.666, dated 27.09.2012.

The application for condonation of delay was filed on the ground that the Commissioner (Appeals) heard the Order-in-Appeal on 20.10.2010, but did not pass the order in the presence of the Counsel/Representative of the appellant. Later on, they came to know that an order was passed and accordingly, sent a letter on 04.02.2011 requesting the Commissioner (Appeals) to provide them a copy of the said order. The Superintendent of the

Office of the Commissioner (Appeals) *vide* letter, dated 11.02.2011, intimated the appellant that the order was passed in Order-in-Appeal No.89/2010 (H-II) Cus on 21.10.2010 and despatched on the same day itself to Bollaram address of the appellant as per subject Appeal Memoranda enclosing a photo copy of the despatch register evidencing despatch of the same through Speed Post. After receipt of the said letter, the appellant addressed a letter, dated 24.02.2011, stating that in the appeal, they have given their address as Bachupally, but not Bollaram and requested to provide them a copy of the order in Order-in-Appeal in order to enable them to proceed further. Thereafter, the Commissioner (Appeals) addressed a letter, dated 11.03.2011 stating that on re-verification, it was found that the cover addressed to the appellant was sent by speed post to the correct address at Bachupally only, but there was wrong-pasting of speed post slip. Another letter was also posted to Bollaram address. They admitted the addressing of the cover properly to the Bachupally address, but sent to the Bollaram address.

After receipt of the said letter, when the appellant made enquiries in Bachupally Unit, it has come to light that on 09.07.2011, some Officer in R&D Wing of the Unit had received the order, dated 21.10.2010, on 28.10.2010 and since he was not aware of the importance of the said order, he kept it in his draw and failed to intimate/deliver the same to the Officer concerned of the appellant's unit. The appellant furnished relevant papers to the Advocate on 14.07.2011, received draft appeal on 18.07.2011 and ultimately filed the appeal with the delay of about 175 days. They sought condonation of the said delay for the above reasons.

The Tribunal dismissed the application with the following observations:

> "A copy of the impugned order was received by the appellant on 28.10.2010. The appeal was filed on 21.07.2011 with the above delay. In the present application, it is admitted that "some officer in the R&D Wing of the Unit" had received Order-in-Appeal No.89/2010, dated 21.10.2010 on 28.10.2010. It is further submitted that the said Officer was not aware of the importance of the said order-in-appeal and hence, kept it in his drawer and failed to intimate/deliver the same to the concerned Officers of the Unit. It is further submitted that the order-in-appeal was delivered to an Advocate on 14.07.2011 and that the appellant received the draft appeal from the Advocate on 18.07.2011 and further that the relevant papers were delivered to a Courier on 19.07.2011. This application contains a few other averments in consistent with the above submissions and the same are to be effect that the appellant requested the Commissioner (Appeals) for a copy of the order-in-appeal and, after a lot of correspondence and visits to the office of the Commissioner (Appeals), they came to know on 09.07.2011 only about the receipt of the order-in-appeal. The written submissions filed by the appellant give a sequence of events starting with a dated 04.02.2011. Though the order-in-appeal was admittedly received by the appellant on 28.10.2010, there is no cogent explanation of the delay between that date and 04.02.2011. That some Officer in the R & D Wing of the appellant received the order-in-appeal and, without realizing its importance, kept it in his drawer is not a sufficient explanation. There is no mention of the name of the Officer in the COD application, nor has he been identified otherwise. The appellant has not even

cared to bring on record an affidavit of any such Officer in support of the present application."

We have perused the application for condonation of delay along with the order passed by the Tribunal and we are satisfied with the reasons given by the appellant. We have also observed that the present case arose out of the application of the appellant for refund of the import duty wrongly paid by it.

Confusion arose due to the wrong-pasting of the speed post slips by the Office of the respondent to the Bollaram address instead of Bachupally address. The application was dismissed solely on the ground that though the order was received on 28.10.2010, no cogent explanation was given from 28.10.2010 to 04.02.2011 and the affidavit of the Officer, who received the said order, was not filed. The correspondence filed before us and admitted by the respondent in their reply thereto clearly shows that the appellant was diligent in pursuing its case.

In the circumstances, we hold that the order passed by the Tribunal is perverse and accordingly we set aside the same and condone the delay of about 175 days in filing the appeal, subject to payment of Rs.10,000/- (Rupees ten thousand only) within four weeks from today to the respondent. The Tribunal shall take the appeal filed by the appellant on file and dispose of the same in accordance with law.

Appeal is accordingly allowed.

Consequently, miscellaneous petitions, if any, also stand disposed of.

DILIP B.BHOSALE,J

A.RAMALINGESWARA RAO,J

Dt:17.03.2015

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