THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

<u>C.E.A.No.35 of 2015</u>

-

DATED:10.04.2015

Between:

The Commissioner of Customs,

Central Excise & Service Tax,

Guntur.

… Appellant

And

Shri K. Venkateswarlu,

Vijayawada.

….Respondent

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

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-

C.E.A.No.35 of 2015

Judgment : (per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This appeal is sought to be preferred and admitted against the judgment and order of the learned Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, dated 5.6.2014, by which, the learned Tribunal had dismissed the application for condonation of delay in preferring the appeal before it. The learned Tribunal found that there has been a delay of 243 days in filing the appeal by the Revenue. While entertaining this application, the learned Tribunal had given a chance to the Revenue to file a miscellaneous application explaining the reasons for the delay. In spite of the aforesaid chance being given, the learned Tribunal was not satisfied with the explanation offered by the Revenue and the findings of the learned Tribunal on this aspect are set out in paragraph-4.1 of the impugned judgment, which is as follows:

> "It is apparent from the record that the Order-in-Appeal was communicated to the Commissioner of Central Excise, Guntur on 3.12.2012 and the appeal was filed before this Tribunal on 4.11.2013, resulting in delay of 243 days. The reason for delay has not at all been explained by the Revenue with any plausible evidence, which is manifest from the above date chart provided by the counsel for respondent. Hence, it cannot be said that the Revenue has made out a case for condonation of delay in late filing of appeal. It is a settled principle of law that delay cannot be condoned as a matter of right or on the request of the party, unless 'sufficient cause' is shown, entitling the Court to exercise its discretion to condone the delay, which is entirely absent in this case."

In spite of the aforesaid fact finding, Sri Gokhale, learned counsel appearing for the appellant submits that the learned Tribunal has not considered the explanation.

We think that this submission has to be rejected in view of the aforesaid fact finding quoted above. It is an appreciation of fact on the question of condonation of delay and in the absence of any allegations of perversity, which is the case here, the Court cannot look into the matter in this jurisdiction. Therefore, no element of law is involved, let alone substantial question of law.

The appeal is accordingly dismissed. No costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

10th April, 2015

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