In the High Court of Judicature at Madras

Dated : 08.2.2016

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice N.KIRUBAKARAN

Civil Miscellaneous Appeal No.11 of 2016 and CMP.No.44 of 2016

S.Benjhamin ...Appellant

Vs

1.The Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, I Floor, Shastri Bhavan Annexe, Haddows Road, Chennai-6.

2.The Commissioner of Central Excise, Chennai III Commissionerate, Chennai-34. ...Respondents

APPEAL under Section 35G of the Central Excise Act against the order dated 30.1.2012 made in Final Order No.87/2012 made in Appeal No.C/25/2011 of-Customs, Excise and service Tax Appellates Tribunal, Sough Zone Bench, Chennai and against the order dated 31.12.2008, made in order in Original No.12/2008 K.No.V/15/62/41/2007(X-Adj.III)of Commissioner of Central Excise, Chennai III, Commissioners, Chennai 34.

For Appellant : Mr.S.Prabhakaran

For Respondent-2 : Mr.A.P.Srinivas

JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J

This appeal is filed under Section 35G of the Central Excise Act, questioning the correctness of the decision of the Customs, Excise and Sales Tax Appellate Tribunal refusing to condone the delay in filing a regular appeal before the Tribunal.

2. Heard Mr.S.Prabhakaran, learned counsel for the appellant. Mr.A.P. Srinivas, learned Standing Counsel takes notice for the second respondent.

3. By an Order in Original bearing No.12/2008 passed by the Commissioner of Central Excise, he directed the confiscation of goods seized under Section 111(j) of the Customs Act, 1962, however, with permission to the company to redeem the goods on payment of fine of Rs.40 lakhs and upon payment of appropriate duty and other charges. A penalty of Rs.7.5 lakhs was also imposed upon the company. The demand of more than Rs.1.30 crores under Section 72 and a demand for a penalty of equivalent amount under Section 114A were also confirmed by the Order in Original. Personal penalties were also imposed upon the individuals. The appellant herein filed an appeal before the Tribunal along with an application for condonation of the delay of 603 days. The Tribunal, by an order dated 30.1.2012, dismissed the condone delay application on the ground that there was no sufficient cause and that the appellant was completely negligent in prosecuting the remedies. Therefore, the appellant is before us.

4. It is true, as observed by the Tribunal in paragraph 7 of its decision, that the law of limitation is founded upon public policy. But, in the case on hand, another Director has already filed an appeal in time. It is pending consideration before the Tribunal. The appellant herein is the Managing Director of the company. Therefore, there is no reason for him to be so negligent as not to pursue a remedy, when one other Director has been prompt in pursuing. The Order in Original has allowed redemption of goods upon payment of Rs.40 lakhs. The penalty imposed is Rs.1.38 crores. Hence, in cases of this nature, the Tribunal cannot decide the case with pedantic approach especially when another appeal is pending.

5. Mr.A.P.Srinivas, learned Standing Counsel stated that the appellant may have to make a pre-deposit.

6. But, that is a stage, which will arise only after the delay is condoned and the application is taken up for hearing. The Tribunal will have to decide as to whether the application for waiver of pre-deposit should be considered in the light of the amendment or not. Therefore, we do not wish to go into that question for the present.

7. Accordingly, the civil miscellaneous appeal is allowed, the order of the Tribunal is set aside and the Tribunal may take up the application for waiver and the application for stay and decide in accordance with law as they understand it as on date.

No costs. Consequently, the above CMP is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To
1.The Registrar,
Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, I Floor, Shastri Bhavan Annexe, Haddows Road, Chennai-6.
2.The Commissioner of Central Excise, Ch-III Commissionerate, Chennai-34.

+2 ccs to Mr.T.P.Senthilkumar, Advocate, sr.7980
+1 cc to Mr.A.P.Srinivas, Advocate, sr.8717

CMA.No.11 of 2016 &
CMP.No.44 of 2016

scd co
kra 15.02.2016