IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.12.2016

Coram:
THE HONOURABLE MR. JUSTICE HULUVADI G. RAMESH
AND

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

C.M.A.Nos.133 and 134 of 2011

M/s.Tamil Nadu Cements Corporation Ltd.,
represented by its DGM Mr.M.Chandrasekaran,
Alangulam Works,
Tamilnadu Cements P.O. 626 127.
(Via) Rajapalayam ... Appellant

Versus

1. Customs Excise & Service Tax,
   Appellate Tribunal, South Zonal Bench,
   I Floor, Shastri Bhavan Annexe,
   Haddows Road, Chennai 600 006.
2. Commissioner of Customs & Central Excise,
   (Appeals No.1), No.1, Williams Road,
   Cantonment, Tiruchirapalli.
3. The Assistant Commissioner of Central Excise,
   Rajapalayam Division, Rajapalayam. ...Respondent

Prayer: Civil Miscellaneou Petitions filed under section 35G of Central Excise Act, 1944 against Order No.665, 666 of 2007 dated 01.06.2007 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant in both appeals .. Mr. S. Murugappan

For Respondents in both appeals .. Mr. Umesh Rao K. Standing Counsel

JUDGMENT

(Judgment of this Court was delivered by Dr. Anita Sumanth, J)

The appellant suffered an order of the Assistant Commissioner of Central Excise disallowing CENVAT credit on prepaid explosives and lubricants used in Mines during the period October 2001 to May 2002 in view of the judgment of the Supreme Court in the case of Commissioner of Central Excise, Jaipur Vs. J.K.Udaipur Udyog Ltd ((2002 (147) E.L.T.877). The appeal filed by the assessee was rejected by the Commissioner (Appeals) by order dated 15.10.2005. The aforesaid judgment of the Supreme Court was overruled by a Full Bench of the Supreme Court in the case of Vikram Cements Vs. Commissioner of Central Excise, Indore 2005(194) E.L.T.3 (SC) by judgment dated 18.1.2006.

2. Pursuant thereto, the appellant was advised to file appeals against the order of the Commissioner (Appeals) before the Customs, Excise and Service Tax Appellate Tribunal, Chennai (CESTAT) and appeals were filed on December 2006 with a delay of 25 months and 14 days. Along with the appeals, miscellaneous petitions for condonation of delay were filed. The CESTAT was not inclined to condone the delay on the ground that no satisfactory reason has been adduced by the appellant. The miscellaneous applications thus stood dismissed vide order dated 1.6.2007, in consequence whereof, the appeals were dismissed as time barred.

2. The reason cited for the delay is that while initially there was no scope for appeal by virtue of the judgment of the Supreme Court in J.K.Udaipur Udyog, the reversal of the judgment by the Full Bench gave hope to the Appellant to file further appeals.

3. The judgment of the Supreme Court was delivered on 16.1.2006 and the appeals were filed on 25.11.2006. However, in the facts and circumstances of the matter as noted by us above, we take a lenient view and condone the delay of 25 months and 14 days upon payment of costs of Rs.5,000/- in each

case, to the Tamilnadu Mediation and Conciliation Centre, High Court, Chennai, within a period of three weeks from the date of receipt of a copy of this order. Upon furnishing copy of the challan confirming such payment, the matters shall be adjudicated upon by the CESTAT on merits. Both appeals are allowed in the above terms. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msr

To
1. The Customs,
   Excise and Service Tax Appellate Tribunal,
   South Zonal Bench, Chennai.

2. Commissioner of Customs & Central Excise,
   (Appeals No.1), No.1, Williams Road,
   Cantonment, Tiruchirapalli.

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

4. The Assistant Registrar,
   Tamilnadu Mediation & Conciliation Centre,
   High Court, Chennai.

5. The Section Officer,
   VR Section,
   High Court, Madras-104.

+2cc to Mr.Umesh Rao, Advocate, S.R.No.72789 & 72790

MSM(CO)
RS(25/01/2017)