IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2016

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
AND
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Civil Miscellaneous Appeal Nos.2494 and 2495 of 2016
and
C.M.P.Nos.17627 and 17628 of 2016

M/s. Prachi Silks
No.2/1/1, 25th Cross
cubbonpet, Bangalore-560 002. .. Appellant in CMA 2494/2016

M/s. Trimurti International,
No.6,17th Cross,
Cubbonpet, Bangalore 560 002. .. Appellant in CMA 2495/2016

Vs.

1. Customs Excise and Service Tax
   Appellate Tribunal,
   South Regional Bench,
   Nungambakkam, Chennai.

2. The Commissioner of Customs
   (Seaport-Export), Customs House,
   No.60, Rajaji Salai,
   Chennai-600 001. .. Respondents in both CMAs.

Civil Miscellaneous Appeals filed under Section 130 of Customs Act, Clause 15 of the Letters Patent against the Final Order No.41390 and 41391 of 2016 dated 17.8.2016 passed by the first respondent-Tribunal with further direction to the first respondent to restore the appeal Nos. C/41168 and 41169/2016 and decide the same on merits.

For Appellant : Mr.K.Jayachandran

For Respondent : V.Sundareswaran, Standing Counsel

COMMON JUDGMENT

(Judgment of the Court was delivered by
NOOTY.RAMAMOHANA RAO,J)

Both these appeals are directed against the orders passed by the Customs Excise and Service Tax Appellate Tribunal, South

Regional Bench, Nungambakkam, Chennai, dated 17.8.2016 in Final Order No.41390 and 41391 of 2016, declining to condone the delay of 570 days in preferring appeal against the Orders-in-Original No.29138 of 2014, dated 28.08.2014.

2. The Assessee has asserted that he was not financially very sound to make the pre-deposit to prefer appeal and hence he needed some time to gather the necessary financial support for preferring the said appeal. In that process, the delay has occurred in preferring appeal.

3. By the impugned order, the Tribunal has declined to condone the delay on the ground that no good reasons have been disclosed for condonation of delay and the reason assigned did not appeal to the Tribunal.

4. We have noted that during the course of it's order, the Tribunal has noticed the ratio laid down in the Judgment rendered by the Supreme Court in N.Balakrishnan vs. M.Krishnamurthy - 2008 (228) ELT 162 (SC).

5. We are afraid that the Tribunal has missed the essential principle that has been laid down by the Supreme Court for considering the applications for condonation of delay. The first and foremost principle is that no party should be denied access to justice all due to lack of necessary financial support to bear the costs to litigate. In other words, distressful condition in which a litigant is positioned should not come in his way to seek a remedy against injustice caused to him. The second most important principle is that, so long due to delay the opposite parties have not changed their position and if the opposite parties are not going to suffer any prejudice by the condonation of delay, a liberal approach can be adopted in the matter of condonation of such delays. In the instant case the Revenue's interests will not suffer any prejudice by condoning the delay. Normally, very liberal approach is adopted unless the delay itself is so enormous one which is almost as much as a period of limitation that was prescribed for initiating a legal proceedings seeking a similar relief in a civil Court. Wherever delay of certain extent, like in the instant case falls for consideration, the ends of justice would be served better by imposing certain terms on the party seeking condonation of delay so that it will serve the purpose of reminding the parties not to sleep over their right for too longer a period.

6. Taking all these factors in to consideration we feel that ends of justice would be served better if the delay in preferring the appeal by the appellant is condoned, but subject to payment of costs. Hence, the delay of 570 days in preferring both the appeals against the Orders in Original dated 28.02.2013 is condoned subject to payment of costs of Rs.5000/-

(Rupees Five Thousand only) in each of the cases to the Mediation and Conciliation Centre attached to this High Court, on or before 25.11.2016. Upon production of receipt acknowledging the said payment by the Mediation and Conciliation Centre, the Tribunal shall process the appeals preferred by the present appellant and if they are otherwise in order, proceed with the same on merits.

7. This order has been passed by us after hearing Shri Sundaresan, learned Standing Counsel who opposed the request of the appellant for condonation of delay on the ground that no serious effort is made by him to explain the delay on day to day basis, as the delay is not of a reasonable length of period. According to Shri Sundaresan, distressful conditions of the party, is an invented reason for condonation of delay rather than being the real fact. We are not inclined to accept these contentions in the fact situation prevailing in the present case.

8. In view of the foregoing reasons, both the Civil Miscellaneous Appeals stand allowed and the Orders under Appeal passed by the Tribunal stand set aside. No costs. Consequently, C.M.P.Nos.17627 and 17628 of 2016 are closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

gr.

To

1. Customs Excise and Service Tax
Appellate Tribunal,
South Regional Bench,
Nungambakkam, Chennai.

2. The Commissioner of Customs
(Seaport-Export), Customs House,
No.60, Rajaji Salai,
Chennai-600 001.

Copy to

The Assistant Registrar
Mediation and conciliation Centre
High Court, Madras

1 cc to Mr.V. Sundareswaran, advocate Sr. 65145
2 cc to M/s. Jayachandran, Advocate Sr. 64681

NM (CO)
kk 9/12