

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2735 of 2015

Shri. Srijith C.,
'Amrita', 637/1, 8th Cross,
Annasandra Palya Extension,
HAL Post, Bangalore - 560 017
Karnataka ... Appellant

vs.

1. The Customs, Excise and Service Tax
Appellate Tribunal, South Zonal Bench,
No.26 Shastri Bhavan Annexe Building,
Haddows Road, Chennai - 600 006
2. The Commissioner of Customs (Seaport-Export),
Custom House, No.60 Rajaji Salai,
Chennai - 600 001 ... Respondents

Civil Miscellaneous Appeal filed under Section 130A of the
Customs Act, 1962, as against the Final Order No.40680/2015
dated 26.06.2015 on the file of the Customs, Excise and Service
Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr. S.Murugappan
For Respondents : Mr. T.Chandrasekaran, for R-2
Tribunal, R-1

J U D G M E N T

(Judgment of the Court was delivered by S.Vimala, J.,)

This Civil Miscellaneous Appeal has been filed by the
assessee / appellant herein under Section 130A of the Customs
Act, 1962 (hereinafter will be referred to as "the Act"), as
against the Final Order No.40680/2015, dated 26.06.2015, on the
file of the Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench, Chennai.

Brief facts:-

2. The appellant was working as a Branch Manager, in a firm called, M/s. International Logistics Freight Forwarders at Bangalore and was carrying on business of freight forwarding from February 2006 to August 2008.

2.1. M/s. Glow Freight Logistics, a registered Customs House Agent (CHA), filed a Shipping Bill, dated 25.10.2006, on behalf of M/s. Rare Crafts Overseas, Bangalore, for the export of goods. The goods were declared as "Indian Artistic Wooden Handicrafts", but on interception by Intelligence, the container was found to contain red sander wood logs, which was an item prohibited for export under the Act read with Export and Import (EXIM) Policy.

2.3. It was the allegation of the respondents that the appellant engaged in the handling of export cargo despite not being a licensed CHA and that the appellant had a role to play in the alleged smuggling. But the case of the appellant was that, he is no way connected with the alleged smuggling of prohibited items and therefore, he was not liable for penalty under Section 114 of the Act. However, the second respondent passed an Order-in-Original, dated 31.03.2012, by which, he imposed a penalty of Rs.5,00,000/- under Section 114 of the Act, upon the appellant.

2.4. The appellant filed an appeal before the CESTAT / the first respondent herein with an application to condone the delay of 217 days. The Tribunal dismissed the same, by the order, dated 26.06.2015 and aggrieved over the same, the appellant is before this Court, raising the following substantial questions of law:-

"1. Whether it is legal and proper for the first respondent - Tribunal to dismiss the application for condonation of delay without any appreciation of the submissions made and without rendering any reason for such dismissal?

2. Whether non-consideration of the factual position in the background of settled law vitiates the order passed by the Tribunal?"

3. The order passed by the CESTAT, dismissing the appeal, on technical grounds, is under challenge. Admittedly, the order was not passed on merits, but on the technical ground of limitation. The justification for passing such an order without assigning sufficient reason and without considering the materials placed by the appellant is brought under challenge before this Court.

4. It was the case of the appellant that he was not aware of the order passed by the adjudicating authority, as he left the services of his erstwhile employer, M/s.International

Logistics Freight Forwarders, Bangalore, and that he came to know about the order when there was a prosecution launched and that was the reason for the delay in filing the appeal.

4.1. It is the grievance of the appellant that the CESTAT dismissed the Application for condonation of delay, without appreciating the submissions made for condonation of delay and dismissing the petition, without assigning any reason for such dismissal.

4.2. In order to appreciate the contentions raised, it is necessary to look into the order passed by the CESTAT, whereunder the appellate authority has held as under:-

"... There is no material on record to suggest that when the appellant left the employer what his present whereabouts. So as it appears that because prosecution has been launched by the Department, appellant tries to keep the matter alive before Tribunal for no good reason."

5. Whether the reasons stated by the CESTAT is sufficient in the eye of law to dismiss the application for condonation of delay is the issue canvassed before this Court.

6. The learned counsel for the appellant submitted that, despite the submissions made on facts and law by the appellant, they were not at all considered and discussed by the CESTAT and that the decisions relied upon by the appellant were also not taken into account while deciding the matter. It is further submitted that the reason is the soul of the judgment and when the judgment is lacking in reasons, it is non-est in the eye of law and therefore, it is a case where the appeal has to be allowed.

6.1. There is a strenuous plea that request for condonation of delay should always be considered sympathetically and that as the CESTAT did not do so, this Court should condone the delay and an opportunity must be given to the appellant to contest the case on merits before the CESTAT.

7. The learned counsel for the second respondent would submit that the delay was willful and therefore, rightly the CESTAT has dismissed the Application to condone the delay.

7.1. This submission cannot be accepted, as there is no material to come to the conclusion that the delay in approaching the CESTAT was willful. The fact remains that the summons from the Criminal Court could not be served on the appellant, as he left the services of the erstwhile employer, and only after issuance of the Non-Bailable Warrant (NBW), the appellant has appeared before the Court. It is unlikely that the appellant should have taken his personal liberty so lightly in not appearing on summons, when he was functioning in a responsible

position, as a Branch Manager. Therefore, the contention that he was not aware of the adjudication proceedings and that is why, there is a delay in filing the application for condonation of delay must be true.

8. In any event, the delay is only 217 days, and the reasons for the delay have been convincingly explained before this Court. Therefore, the CESTAT should have condoned the delay and should have given an opportunity to the appellant, to contest the case, on merits, especially considering the dictum laid down in the following cases, relied upon by the learned counsel for the appellant:-

(i) United Telecom v. Commissioner reported in 2011-TIOL-678-HC-Kar-Cus.

"... The words 'sufficient cause' in section 5 of Limitation Act, 1963 should receive a liberal construction so as to advance substantial justice as held by Apex Court...."

(ii) Bhag Singh v. Major Daljit Singh, reported in 1987 (32) ELT 258 (SC):-

"...the Court while considering an application under Section 5 of the Limitation Act will consider the facts and circumstances not for taking too strict and pedantic stand which will cause injustice but to consider it from the point of taking a view which will advance the cause of justice...."

(iii) Collector Land Acquisition, Anantnag and another v. MST Katiji and Others, reported in 1987 (28) ELT 185 (SC):-

"The Courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression 'sufficient cause'. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits."

(iv) Standard Treads v. Collector, reported in 1996 (83) ELT 30 (Ker):-

"4. It has to be kept in the forefront that ordinarily a litigant does not stand to benefit by lodging an appeal late. He has no interest in wasting time. It has also to be borne in mind that the great possibility of disastrous results creating a situation that a meritorious matter being thrown out at the threshold causing a heavy burden to the cause of justice has to be defeated at the very start.

5. Judiciary gets its respect in the legal order not on account of its power to legalize injustice

on technical grounds. But, it has the capacity and purpose to remove injustice wherever it is in sight and this is what is understood and pointed out by the Apex Court as justice-oriented approach in regard to the matters being thrown out at the threshold of the concerned proceedings."

9. From the decisions, cited supra, it is evident that the CESTAT, instead of choosing to throw out the proceedings at the threshold, should have adopted a pragmatic approach in affording an opportunity to the appellant enabling him to fight for substantial justice. These decisions persuade us to set-aside the order of the CESTAT and to condone the delay, in preferring the Appeal.

10. In the result, this Civil Miscellaneous Appeal is allowed and the order passed by the CESTAT / first respondent herein is set-aside. The delay of 217 days in preferring the appeal is condoned and the matter is remitted back to the CESTAT, with a direction to hear the parties on merits of the case and to pass appropriate orders, in accordance with law.

-s/d-

Assistant Registrar(CSV)

True Copy

Sub-Assistant Registrar

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To

1. The Customs, Excise and Service Tax
Appellate Tribunal, South Zonal Bench,
No.26 Shastri Bhavan Annexe Building,
Haddows Road, Chennai - 600 006
2. The Commissioner of Customs (Seaport-Export),
Custom House, No.60 Rajaji Salai,
Chennai - 600 001

+1 cc to M/S.S.Murugappan Advocate sr.1009
+1 cc to M/S.T.Chandrasekaran Advocate sr.1065

C.M.A.No.2735 of 2015

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aa28/01/2016