IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM

THE HON'BLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Civil Miscellaneous Appeal Nos.2521 and 2522 of 2016
and C.M.P.Nos. 17860 and 17861 of 2016

Shri.G.Masilamani ... Appellant/Appellant in both CMA

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 Service Tax,
Service Tax Commissionerate,
Newry Towers,
No.2054-I, IInd Avenue,
Anna Nagar,
Chennai - 600 040. ... Respondents/Respondents in both CMA

Civil Miscellaneous Appeals filed under Section 130A of Customs Act, 1962, against the Final Order Nos.41421 and 41422 of 2015 dated 15.10.2015, passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.S.Murugappan

For Respondents : Mr.A.P.Srinivas, Standing Counsel

COMMON JUDGMENT
(DELIVERED BY NOOTY.RAMAMOHANA RAO, J.)

We have heard Shri S.Murugappan, learned counsel for the Appellant and Shri A.P.Srinivas, learned Standing Counsel who has accepted notice on behalf of the Commissioner of Service Tax, Chennai, second respondent herein, was also heard.

2. Since the issue that is required to be considered by us is a pure question of law, we have taken up the matter for final disposal instead of admitting the Civil Miscellaneous Appeals and then keeping them pending on the file of this Court for a while.

3. The Assessee is the Appellant who is aggrieved by the Final Orders passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai, in Final Order Nos. 41421 and 41422 of 2015, dated 15.10.2015. The Appellant has preferred the said appeals against the Orders in Original dated 30.08.2012 passed by the Commissioner of Service Tax, Chennai. Since there was a delay of 291 days in preferring the said appeals to the Tribunal, the Appellant moved Applications seeking condonation of delay. The reason assigned by the Appellant for seeking condonation of delay as set out in the affidavit in support of the Applications for condonation of delay, is that though the Orders in Original were received on 23.11.2012, consequently the appeals should have been preferred on or before 22.02.2013, by which day 90 days period provided for filing appeal expires, the Appellant has not noticed that the Orders in Original have already been received by one of the employees of the firm. In the meantime, the Appellant has himself has taken ill and he has also produced necessary certificate from the Physician who treated him. In spite of that, the Tribunal viewed that the delay would cause extreme hardship to the Revenue to recover the dues and that condonation of delay would amount to lenient approach towards dilatory tactics normally adopted by the Assessee concerned. For the aforesaid reasons, the Applications seeking condonation of delay were dismissed and consequently the appeals also stood rejected. Hence, these two appeals were preferred to this Court now.

4. One of the fundamental principles of law which is consistently followed while dealing with Applications seeking condonation of delay is that if the cause of justice is likely to suffer, the delay that has occasioned in approaching the Court concerned should be dealt with on liberal lines and normally deserves to be condoned, if necessary by putting the party at default on some terms. Normally, the delay can be refused to be condoned where the rights of the other party, which have crystallized in the meantime are likely to be impacted by condonation of such delay. The delay also is not permitted to be condoned where the opposite party has altered its position under bonafide impression that the party who has suffered the decree has accepted that. In such circumstances, condonation of delay is construed to cause, undue and irreversible hardship to the opposite side. In such cases, delay can be declined to be condoned.

5. In the instant case, the Appellant has shown the reason for occasioning of the delay. He has pointed out that he has some medical issue that required greater attention to be paid by him. A certificate from the competent Physician has also been produced to vouch for the said fact. In such circumstances, a liberal approach ought to have been adopted by the Tribunal for condonation of delay, particularly when the delay is only of 291 days, but not an enormous or abnormal one.

6. What surprised us the most is, the observation of the Tribunal that irreversible hardship would be caused to the Department in recovering the dues. The Department as part of the Central Government had the necessary authority and there are adequate measures provided for effecting recovery of arrears. Therefore, the delay of 291 days in preferring the appeal cannot be construed as to be causing such an unsurmountable hardship to the Government of India in the matter of recovery of dues by it. Therefore, we are of the opinion that the order passed by the Tribunal declining to condone the delay is not justified and is an unsustainable one and hence it is set aside.

7. Accordingly, the delay in preferring the appeal before the Tribunal by the Appellant/Assessee is condoned subject to payment of Rs.3,000/- (Rupees Three Thousand only) in each case representing compensatory costs, within 15 days from today, in the Office of the Commissioner of Service Tax concerned, Chennai. Upon production of the receipt for payment of Rs.3,000/- in each case, the Tribunal will proceed to entertain the appeals and deal with them on merits. If for any reason, the Appellant fails from payment of costs, it shall be construed that the Final Order Nos.41421 and 41422 of 2015 dated 15.10.2015, passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, are accepted by him without any further reference to this Court.

8. Both the Civil Miscellaneous Appeals are disposed of accordingly. Consequently, C.M.P.Nos. 17860 and 17861 of 2016 are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gr.

Copy to:
The Registrar, Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

+1cc to Mr.S. Murugappan, Advocate, S.R.No.68409
+1cc to Mr.A.P. Srinivas, Advocate, S.R.No.69023

mmi(CO)
md(05/12/2016)