

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 03.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA Nos.754 and 755 of 2016
and CMP Nos.6182 to 6184 of 2016

M/s.Sivalogam Steels Pvt. Ltd.,
Rep. by its Director, Shri.T.Thanigaivel,
36/6, Main Road, Kandappar Street,
Ayyanpettai, Kanchipuram - 631 601 ... Appellant/ Appellant
in both CMAs

Vs.

1. The Customs Excise and Service Tax
Appellate Tribunal, (South Zonal Branch),
No.26, Shastri Bhavan Annexe Building,
Haddows Road, Chennai - 600 006.
2. The Commissioner of Central Excise (Appeals),
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ... Respondents/ Respondents
in both CMAs

Prayer in CMA No.754 of 2016: The Civil Miscellaneous Appeal is filed under Section 35G of Central Excise Act read with Sec.83 of Finance Act, 1994, against the Final Order No.41234/2015 dated 25.09.2015 through COD Application Nos.E/COD/40253/2015 in Appeal No.E.40662/2015-DB, passed by the 1st respondent-Tribunal.

Prayer in CMA No.755 of 2016: The Civil Miscellaneous Appeal is filed under Section 35G of Central Excise Act read with Sec.83 of Finance Act, 1994, against the Final Order No.41235/2015 dated 25.09.2015 through COD Application Nos.E/COD/40254/2015 in Appeal No.E.40663/2015-DB, passed by the 1st respondent-Tribunal.

For Appellant : Mr.L.J.Vengatesh
in both CMAs

For Respondents : Mr.S.Haja Mohideen Gisthi (for R2)
in both CMAs Senior Panel Counsel

COMMON JUDGMENT

[Judgment of the Court was made by S.MANIKUMAR, J.]

Being aggrieved by the order of the Customs Excise and Service Tax Appellate Tribunal (CESTAT), Chennai Bench, made in Appeal Nos.E.40662/2015-DB and E.40663/2015-DB dated 25.09.2015, declining to condone the delay of 405 days in filing the appeals, against the final orders in Nos.41234/2015 and 41235/2015, respectively, instant Civil Miscellaneous Appeals viz., CMA Nos.754 and 755 of 2016, are filed.

2. Assailing the correctness of the impugned orders, Mr.L.J.Vengatesh, learned counsel for the appellant submitted that before CESTAT, Chennai Bench, imposition of duty and personal penalty of Rs.10,37,673/-, were challenged.

3. According to the learned counsel for the appellant, though the order dated 10.09.2013 passed in Appeal Nos.121 and 122 of 2013 dated 10.09.2013, was received by the appellant's tenant on 05.11.2013, it was misplaced by them and thereafter they handed over the same to the appellant in the month of January 2015. He further submitted that the statutory time limit for filing of the appeal ended on 04.02.2014, but the appeal could not be filed within the stipulated time, for the abovesaid reason.

4. Learned counsel for the appellant submitted that on account of his mother's sudden demise, he could not file the appeals in time. That apart, the appellant was outside the country between 27.09.2013 and 10.02.2014. Again, he had to leave the country and he came back only on 26.07.2014. Citing the abovesaid reasons, Mr.L.J.Vengatesh, learned counsel for the appellant submitted that though sufficient cause for not making the application within the period of limitation, was shown and when the Courts have consistently held that while testing the correctness of the reasons, on the sufficient cause shown, Courts have to be reasonable, pragmatic, practical and liberal in condoning the delay, to advance substantial justice, ignoring the abovesaid principles of law, CESTAT, Chennai Bench, vide final order in Appeal Nos.E.40662/2015-DB and E.40663/2015-DB dated 25.09.2015, has dismissed the condone delay petitions, by merely observing that there was no justification for the delay of 405 days, on the grounds of dislocation of residence, after the receipt of the order in Appeal Nos.121 and 122 of 2013 dated 10.09.2013.

5. Attention of this Court was also invited to a decision of the Hon'ble Apex Court in Esha Battacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others, reported in (2013) 12 SCC 649 and other decisions referred to in the memorandum of grounds. During the course of argument, learned counsel for the appellant

also submitted that the department's appeal was condoned, with a delay of more than 1000 days.

6. Per contra, inviting the attention of this Court to the reasons assigned in Ground Nos.4 and 5 of the supporting affidavit filed for condonation of delay in filing the appeal, Mr.S.Haja Mohideen Gisthi, learned Senior Panel counsel submitted that the reasons assigned are not satisfactory and thus, the tribunal has rightly dismissed the condone delay petitions. He submitted that the well considered order of the tribunal need not be interfered with.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. By order in Appeal Nos.121 and 122 of 2013 dated 10.09.2013, duty and personal penalty of Rs.10,37,673/- have been imposed. Certainly that said order prejudices the interest of the appellant. Though, the copy of the order is stated to have been received by the tenant of the appellant on 05.11.2013, contentions have been raised that it has been misplaced by them. The appellant has also stated that there was some dislocation of residence and his mother had passed away on 10.02.2014. Before CESTAT, the appellant has sought for condonation, citing the above as unexpected.

9. After adverting to a catena of decisions, the Hon'ble Supreme Court in Esha Battacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others, reported in (2013) 12 SCC 649, has broadly culled out the principles of law to be considered in the matter of condonation and it is suffice to extract paragraph No.21 from Esha Bhattacharjee's case.

" 21. From the aforesaid authorities the principles that can broadly be culled out are;

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

10. Reverting to the case on hand, it could be seen that the order impugned is imposition of duty and personal penalty to the tune of Rs.10,37,673/-. As observed supra, the said order certainly is prejudicial to the interest of the appellant. Though, while dismissing the condonation petition, CESTAT, Chennai Bench, has observed that there is no justifiable cause, going through the reasons assigned, it could be seen that the appellant has not offered a detailed explanation. For brevity, paragraph Nos. 4 and 5 of the reasons assigned in the supporting affidavit to Appeal Nos.E40662 & E40663 of 2015, are extracted hereunder.

"4. All the Appellant Directors of the company searching for their survival which dislocated their residence from the normal address, where the commissionerate orders being delivered to us by our tenant belatedly without knowing the important and without any intention too. Thus the receipt of order on which this appeal is in question was received by the authorised then director belatedly also the one of the main reason.

5. In the meanwhile Director Appellant's mother was also expired on 10th Feb'2014, (Death Certificate enclosed) which derails our daily activities again, also the continuous cause for this delay in filing of the appeal in question."

11. The Tribunal has observed that dislocation of residence is not a justifiable cause. But the fact remains that the appellant has contended that his mother had passed away. As rightly contended by the learned counsel for the appellant that length of time, should not weigh in the minds of the Courts/tribunals, in considering the sufficiency of the cause shown, but at the same time, cause should be explanatory.

12. While attention of the reasons assigned in the supporting affidavit was brought to the notice of the learned counsel for the appellant, he fairly submitted that delay be condoned by imposition of reasonable costs.

13. Inasmuch as the learned counsel for the appellant is also of the view that reasons assigned are not explained in details, but considering the prejudice to be caused, in the event of dismissal of the applications filed to condone the delay and following the principles of law enunciated in the decision of the Hon'ble Supreme Court, we are inclined to condone the delay of 405 days in filing the appeal before CESTAT in Appeal Nos.E.40662/2015-DB and E.40663/2015-DB dated 25.09.2015 on condition that the appellant pays costs of a sum of Rs.2,500/- in each of the appeals to My Lord the Hon'ble Chief Justice's Relief Fund, within a period of three weeks from the date of receipt of a copy of this order, failing which, the order made in the instant appeals viz., CMA Nos.754 and 755 of 2016, would stand dismissed, without reference to the orders of this Court.

14. Civil Miscellaneous Appeals, are allowed, as indicated above. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

ars
To

1. The Customs Excise and Service Tax
Appellate Tribunal, (South Zonal Branch),
No.26, Shastri Bhavan Annexe Building,
Haddows Road, Chennai - 600 006.

2. The Commissioner of Central Excise (Appeals),
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

Copy to

The Section Officer
Accounts Section,
High Court, Madras

1 cc to Mr.S. Haja Mohideen Gisthi, Advocate, sr. 29703
2 ccs to Mr.K. Arunprasad, Advocate, Sr. 29662, 29661

CMA Nos.754 and 755 of 2016
and CMP Nos.6182 to 6184 of 2016

WEB COPY

RSY (CO)
kk 23/6