

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.E.A.No.24 of 2016

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal is preferred, under Section 35G of the Central Excise Act, 1944 (for short "the Act"), against the order passed by the CESTAT, Bangalore in ST/COD/20405/2015 in ST/23019/2014 dated 31.08.2015. By the said order, the CESTAT rejected the appellant's application to condone the delay of 171 days in preferring the appeal against the order passed by the Commissioner (Appeals) dated 30.04.2013.

As has been noted by the Tribunal in its order, while the order was passed by the Commissioner (Appeals) on 30.04.2013, the appellant claimed to have received a copy thereof only on 26.12.2013. He computed the delay in preferring the appeal from that date, and not from 30.04.2013. The appellant contended before the Tribunal that, in January 2014, his father fell ill and was diagnosed with Systolic Dysfunction, Class III, Diffuse 2 vessel Disease, Chronic Kidney Disease and was admitted in Yashoda Hospitals, Hyderabad on 03.02.2014; finally, a surgery was performed on him on 25.07.2014; and he was discharged on 02.08.2014. The appellant had also contended that he was a small contractor, and had no support staff to look after the day to day affairs of the unit, resulting in the delay in filing the appeal before the Tribunal.

From the order under appeal, it is evident that the appellant's father was admitted in hospital for 4 days in the month of February, 2014; 8 days in the month of May, 2014; and 6 days in the month of July, 2014 for liver and kidney ailment ie for a total period of 18 days in three different spells; the appellant sought condonation, of the delay in filing the appeal of over six months (171 days), on the ground of his father's hospitalisation; as the appellant's father's hospitalisation was

only for 18 days, it is evident that the appellant did not show sufficient cause for the delay of 171 days in preferring the appeal, and he was also not able to explain how his father's hospitalisation prevented him from filing this appeal. The Tribunal recorded its conclusion that the delay of 171 days clearly showed negligence and carelessness on the part of the appellant.

Sri A.V.A.Siva Karthikeya, learned counsel for the appellant, has placed before us certain reports relating to the treatment of the appellant's father in Yashoda Hospitals, Hyderabad. It is wholly unnecessary for us to examine the said reports in minute detail, as the jurisdiction which this Court can exercise, under Section 35G of the Act to entertain the appeal, is only if a substantial question of law arises for consideration. The Tribunal is the final Court of fact, and save a finding based on no evidence or one which is perverse, no substantial question of law can be said to arise necessitating interference in an appeal under Section 35G of the Act.

It is evident from the order passed by the Tribunal that the petitioner's father was not hospitalised even for a single day in the months of January, March, April and June 2014. Even in the months of February, May and July, 2014 the appellant's father was hospitalised only for 4, 8 and 6 days respectively. In all, the hospitalisation was only for 18 days. It is not even the appellant's case before the Tribunal that, because of his father's ailment, he did not execute any work or that he did not attend office during this period of more than six months.

The finding recorded by the Tribunal, that no sufficient cause was shown, and the belated filing of the appeal showed negligence and carelessness on the part of the appellant, does not suffer from any infirmity, much less one which gives rise to a substantial question of law necessitating interference in an appeal filed under Section 35G of the Act.

The appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed.

There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 21.06.2016

JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

—

—

—

—

—

—

—

—

—

—

—

—

—

-
C.E.A.No.24 of 2016

-
Date:21.06.2016

JSU