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

C.E.A.No.13 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 Final Order No.21689/2015 in Appeal No.20660 of 2014 dated 24.07.2015.

The appellant herein invoked the jurisdiction of the CESTAT against the order passed by the Commissioner (Appeals). The said appeal was preferred with a delay of 218 days. Along with the application to condone the delay in preferring the appeal, the appellant filed a certificate issued by Dr.(MRS) Uma Rani of Padmavaty Srinivasa Nursing Home, dated 23.02.2014 contending that their failure to file the appeal within time was because of the illness of their Managing Director.

In the order under appeal, the Tribunal observed that the question was whether the Managing Director, who was said not to be maintaining good health, was handling the affairs of the Company; the learned counsel for the appellant had submitted that the Managing Director was not regularly visiting the factory but was managing the day to day affairs of the company on an irregular basis; it was the Cost Accountant Sri N.C.Sitaramacharyulu who was authorised to deal with the matter, and had received the order; the medical certificate, placed on record, showed that the Managing Director of the appellant was suffering from hypertension with effect from 01.07.2013; the impugned order was received by the appellant on 20.04.2013, and there was sufficient time to prefer an appeal thereagainst; the affairs of the company were being taken care of by others; and, as such, the ill-health of the Managing Director was only an excuse. On the ground that the delay could not be condoned on flimsy grounds, and there must be sufficient cause for the delay of 218 days, the Tribunal dismissed the appeal.

It is evident from the order of the Tribunal that the order under challenge before the Tribunal was received not by the Managing Director but by the Cost Accountant of the appellant Company. It is also clear that the Managing Director was not even visiting the factory and it was the Cost Accountant who was authorised to deal with the subject matter of the appeal. The Tribunal has also noted that the medical certificate, produced on behalf of the appellant, showed that the appellant's Managing Director was suffering from Hypertension with effect from 01.07.2013, whereas the impugned order was received even earlier on 20.04.2013 itself.

Sri A.V.A.Siva Karthikeya, learned counsel for the appellant, would submit that the Tribunal did not disbelieve the medical certificate; the limitation prescribed for preferring the appeal is 90 days; the 90 days period ended only on 20.07.2013; even prior thereto, the Managing Director of the appellant was ill from 01.07.2013; and the order under challenge suffers from perversity, as the Tribunal failed to note that the medical certificate shows that the Managing Director of the appellant-Company was undergoing treatment for Hypertensive Heart Disease, and not merely Hypertension.

The finding recorded by the Tribunal that the order was received by the Cost Accountant, and it was he who was required to deal with the matter, has not been disputed before us in this appeal. While interference under Section 35G of the Act would only be justified if a substantial question of law arises for consideration, and a substantial question of law can be said to arise only if the finding of fact recorded by the Tribunal is either based on no evidence or suffers from perversity, we also examined the certificate to determine whether or not the illness, which the Managing Director of the appellant was said to have suffered from, was noticed by the Tribunal.

The said medical certificate was issued by Ms.Uma Rani whose qualification, as recorded in the certificate itself, is M.B.B.S, D.G.O. The Managing Director of the appellant did not suffer from any gynaelogical disorder. It is difficult to believe that the Managing Director of appellant-Company would undergo treatment for Hypertension Heart Disease from a gynaecologist, and not a cardiologist for a heart disease. In any event, the medical certificate dated 23.02.2014 appears to have been obtained just before, and for the purpose of, filing the appeal before the Tribunal. No details as to the nature of treatment, which the Managing Director of the appellant-Company is said to have undergone from 01.07.2013 till 23.02.2014, are even referred to in the said certificate. We see no reason, therefore, to exercise jurisdiction under Section 35G of the Act to interfere with the order under appeal.

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

<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>

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