IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.06.2017
CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.No.1466 of 2017
and
C.M.P.No.7811 of 2017

M/s.Wavoo Jewelers Pvt. Ltd.,
Rep. by its Managing Director
M.M.Maznavi
Chennai-40 ... Appellant

Vs.

1.The Assistant Commissioner of Customs,
(Airport), New Custom House,
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027.

2.The Commissioner of Customs (Appeals),
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

3.Customs Excise and Service Tax Appellate Tribunal,
Southern Zonal Bench,
Shasthri Bhavan, First Floor,
26 Haddows Road,
Chennai - 600 006. ... Respondents

Prayer:
Appeal filed under Section 130 of the Customs Act, 1962, to set-aside the order of the third respondent in dismissing the Condone delay application and the main appeal in C/COD/41115/2016 in C/42418/16 dated 14.03.2017.

For Appellant : Mr.T.Chezhiyan
For Respondents: Mr.A.P.Srinivas

J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

1.This is an appeal preferred against the order dated 14.03.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (in short, the Tribunal).

2.By virtue of the impugned order, the Tribunal has rejected the appeal preferred by the appellant against the order in appeal dated 29.04.2016, passed by the Commissioner of Customs (Appeals-I) [in short, the Commissioner (Appeals)].

2.1.There is no dispute, before us, by the learned counsels appearing for the parties that the appeal with the Tribunal had to be preferred, within a period of three months, from the date of communication of the order of Commissioner (Appeals), under the provisions of Section 129 A (3) of the Customs Act, 1962 (in short, the "Act").

3.The record shows that the appellant had been served with a show cause notice dated 22.04.2013, proposing to deny the benefit of exemption Notification bearing No.85 of 2004. The said show cause notice also proposed to levy differential duty along with interest.

3.1.Furthermore, penalty was also proposed to be levied, on the appellant.

3.2.In response to the said show cause notice, the appellant filed a reply.

3.3.After granting the appellant, a personal hearing, the order-in-original was passed, confirming the demand raised in the show cause notice. The order-in-original is dated 14.01.2016.

4.The appellant claims, that on 23.02.2016, 7.5% of the duty demanded was deposited and an appeal was preferred with the Commissioner (Appeals), against the order-in-original.

4.1.As events transpired, the Commissioner (Appeals), vide order dated 29.04.2016, confirmed the order-in-original.

4.2.The order in appeal, however, as is evident from the record, was despatched to the appellant on 22.06.2016.

5.The appellant claims that the order-in-appeal was received by it, on 26.06.2016.

5.1.It is further claimed by the appellant, that an additional amount was deposited on 16.12.2016, towards duty being 2.5% of the duty demanded.

5.2.It is the stand of the appellant that thereafter, an appeal was lodged with the Tribunal, on 19.12.2016. It is not disputed by the appellant that, if, the date of receipt of the order-in-appeal, is taken into account, then, the appeal with the Tribunal ought to have been lodged on or before 26.09.2016.

5.3.The learned counsel for the appellant concedes that there was a delay in preferring the appeal with the Tribunal.

6.It is, however, the case of the appellant, both, before us, and that, which was articulated before the Tribunal, that the delay was caused, on account of the counsel, who was handed over the brief, failing to keep track of the period of limitation for lodging the appeal, before the Tribunal.

6.1.For this purpose, our attention has been drawn to the application for condonation of delay, filed with the Tribunal.

6.2.The Tribunal, however, by a cryptic order, dismissed the application for condonation of delay and, consequently, the accompanying appeal, on the ground that the appellant had forgotten its own responsibility that it had to file the appeal in time. The Tribunal went on to observe that the appellant was "indolent" and therefore, the delay could not be condoned. The fact that papers had been handed over to the Advocate, who was negligent, according to the Tribunal, was not a sufficient ground for condoning the delay.

7.Mr.A.P.Srinivas, who appears on behalf of the Revenue, i.e., in effect respondent nos.1 and 2, relies upon the impugned order, in opposition to the appeal.

8.We have heard the learned counsels for the parties.

9.According to us, as indicated above, there is no doubt that the appeal which had been preferred, with the Tribunal, was filed, beyond the limitation of three months, stipulated in Section 129 A (3) of the Act.

9.1.We may, also notice, that under sub-section (5) of Section 129 A of the Act, the Tribunal, has been vested with the power to condone the delay, if, sufficient cause is shown.

9.2.Pertinently, sub-section (5) of Section 129 A of the Act, does not provide for an outer limit.

10.As would be evident, from the narration of facts, set out above, since the order-in-appeal, passed by the Commissioner (Appeals), had been received by the appellant on 26.06.2016, the appeal had to be filed, by the appellant herein, on or before 26.09.2016.

10.1.The appeal, in fact, had been filed on 19.12.2016. There was a delay of over three months, in filing the appeal. That being said, the appellant had given reasons for seeking condonation of delay.

10.2.A perusal of paragraph no.2 of the application for condonation of delay, is demonstrative of the fact, that the appellant had handed over, the relevant papers for lodging the appeal, with the Tribunal, to his Advocate, in September, 2016.

10.3.The appellant, as it appears, assumed that the Advocate would act with haste and lodge the appeal, before the period of limitation expired. To the surprise of the appellant, necessary steps, were not taken by the Advocate, in time.

11.According to us, the appellant, in the given circumstances, cannot be put to prejudice, because of the lack of professionalism of the Advocate engaged by it.

11.1.The period of delay, according to us, is not so large that it could not be condoned, by putting the appellant to terms.

12.In these circumstances, we are inclined to condone the delay and consequently, are also of the view, that the order of the Tribunal ought to be set-aside.

12.1.It is directed accordingly.

12.2.The delay, is however condoned, subject to payment of costs of Rs.7,500/- (Rupees Seven Thousand And Five Hundred Only).

12.3.The cost, will be deposited by the appellant, within a period of two weeks from the date of receipt of a copy of this order with the Tamil Nadu State Judicial Academy, Chennai. The proof of cost so deposited will be placed on record.

13.The appeal is disposed of in the aforementioned terms. The Tribunal, will now take up the appeal, lodged by the appellant, in the usual and ordinary course. The appeal shall be heard and disposed, on merits. Consequently, the connected miscellaneous petition shall stand closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ah/pri

To

1.The Assistant Commissioner of Customs,
(Airport), New Customs House,
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027.

2.The Commissioner of Customs (Appeals),
Customs House,
No.60, Rajaji Salai,
Chennai - 600 001.

3. The Officer in charge
Customs Excise and Service Tax Appellate Tribunal,
Southern Zonal Bench,
Shasthri Bhavan, First Floor,
26 Haddows Road,
Chennai - 600 006.

4. The Tamil Nadu State Judicial Academy,
Chennai

+1 cc to Mr.T.Chezhiyan Advocate sr 39454
+1 cc to Mr.A.P.Srinivas Advocate sr 39630

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and
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