IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM

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

C.M.A.NO.1749 OF 2017

Franklin Instruments Maintenance and
Erection Tech Pvt. Ltd.,
rep. by its Managing Director
Mr.Franklin Jayakumar
... Appellant/Appellant

Vs.

The Commissioner (Appeals)-I,
Office of the Commissioner of Service Tax, (Appeal)-I
Newry Towers, 2054/1, Second Avenue,
12th Main Road, Anna Nagar,
Chennai - 600 040.
... Respondent/Respondent

APPEAL under Section 130 of the Customs Act, 1962 against the order dated 07.11.2016 made in COD Application No.ST/COD/40856/2016 in Appeal No.ST/41554/2016-SM received on 18.11.2016 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.S.D.S.Phillip
For Respondent : Mr.A.P.Srinivas

J U D G M E N T

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

1. Issue notice. Mr.A.P.Srinivas, accepts notice on behalf of the Respondent/Revenue.

1.1. With the consent of the counsels for parties, the captioned appeal is taken up for final hearing and disposal.

2. The captioned appeal has been filed by the Assessee and is directed against the order dated 07.11.2016, passed by the

Customs, Excise and Service Tax Appellate Tribunal (in short, 'the Tribunal').

2.1. By virtue of the impugned order, the Tribunal has dismissed the application for condonation of delay, preferred by the Assessee, along with the substantive appeal filed with the said application.

3. The Tribunal, in coming to the said conclusion, has attributed negligence to the Assessee in not filing the appeal in time.

4. We have examined the application for condonation of delay and the affidavit filed along with the application by the Assessee.

5. The principal reason articulated by the Assessee appears to be that upon receipt of the impugned order of the Commissioner (Appeals) by its office, the said order was misplaced by the clerical staff, which was discovered only at a later point in time in a correspondence file.

5.1. It is stated that the order dated 22.04.2015, passed by the Commissioner (Appeals) was received by the Assessee only on 14.05.2015. Since, the discovery of the said order was made in August, 2016, the appeal could be filed only thereafter.

5.2. Besides the aforesaid, the Assessee also makes a reference to the fact that it is in financial difficulty and has not been able to recover monies from its customers. As a matter of fact, there is a reference to the suit action filed against two (2) of its customers.

5.3. The averments, to this effect, are made in paragraph 9 of the affidavit filed in the accompanying application for condonation of delay.

6. The Assessee has claimed that it has a good case on merits and that the demand for service tax raised is substantially barred by limitation.

7. We have perused the record. The record shows that the allegation levelled against the Assessee, broadly, is that it did not deposit service tax, for the periods, spanning between April, 2005 and December, 2008, even though, it had collected service charges from its customers. The demand raised against the Assessee with regard to tax alone is a sum of Rs.18,91,000/-.

7.1. Besides the above, the Assessee has also been called upon to pay interest and penalty.

8. Pertinently, the SCN records the fact that, once, it was pointed out to the Assessee that it had not paid service tax, it had deposited a sum of Rs.4,11,158/- towards service tax along with interest, in the sum of Rs.98,161/-.

9. Having perused the record as also the reasoning given by the Tribunal, we are of the view that though, the period of delay involved is 370 days, which, by no means, is an insignificant period, the Tribunal ought to have examined, whether the delay was deliberate, as mere negligence, by itself, in our view, would not disable the Assessee from having its matter decided on merits.

9.1. As a matter of fact, the Tribunal has not carried out the said exercise, which, in our view, is so very necessary, while dealing with the application seeking condonation of delay. In our opinion, the Tribunal was not only required to look at the period of delay, but was also required to examine, qualitatively, as to whether the reasons set out for seeking condonation of delay were genuine and bonafide.

9.2. Since, an affidavit has been filed setting out the reasons and given the fact that there was nothing on record to suggest to the contrary, we are inclined to give the benefit of doubt to the Assessee.

10. Accordingly, the impugned order of the Tribunal is set aside, subject to the Assessee paying costs, in the sum of Rs.10,000/- (Rupees ten thousand only) to the High Court Legal Services Committee within a period of one (1) week from the date of receipt of a copy of the order.

11. Upon receipt of the proof of costs being filed, the Tribunal is directed to decide the appeal on merits, albeit, in accordance with law.

12. The captioned appeal is disposed of in the aforementioned terms.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Commissioner (Appeals)-I,
   Office of the Commissioner of Service Tax, (Appeal)-I
   Newry Towers, 2054/1, Second Avenue,
   12th Main Road, Anna Nagar,
   Chennai - 600 040.

2. The Customs, Excise and Service Tax Appellate Tribunal, Chennai.

+2cc to Mr.S.D.S.Phillip, Advocate Sr. 45057
+1cc to Mr.A.P.Srinivas, Advocate Sr. 45674

C.M.A.No.1749 of 2017

GJ(CO)
VR(25/07/2017)