IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

The Hon'ble Sri Justice V.RAMASUBRAMANIAN
and
The Hon'ble Smt Justice T. RAJANI

C.E.A. No.114 of 2017

Between:

M/s. Kalathil Brothers Construction Company Private Limited, Door No.10-10-94, Ground floor, Sairamnagar, Beside Simhagiri Hospital, New Gajuwaka, Visakhapatnam – 530 026.

… Appellant

Vs.

Commissioner of Central Excise & Customs, Visakhapatnam-II Commissionerate, Central Excise Building, Port Area, Visakhapatnam – 530 035 A.P.

.. Respondent

For Petitioner : Mr. A.V.A. Siva Kartikeya

For Respondents : Mr. Sundari R. Pisapati, Standing counsel for the Department

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SMT. JUSTICE T. RAJANI

C.E.A.No.114 of 2017

ORDER: ***(V. Ramasubramanian, J)***

Aggrieved by the dismissal of an application for condonation of delay in filing the appeal by the CESTAT, the Assessee has come up with the above appeal under Section 35 G of the Central Excise Act, 1944.

2. Heard Mr. A.V.A. Siva Kartikeya, learned counsel for the appellant. Mrs. Sundari R. Pisupati, learned standing counsel for the department has taken notice for the respondent.

3. The only question of law arising for consideration is as to whether the Tribunal was right in refusing to condone the delay, in filing the appeal, in the circumstances narrated in the affidavit in support of the application.

4. The delay was about 780 days. The appeal before the Tribunal was under Section 35 B of the Act. Though sub-section (3) of Section 35 B prescribes a period of limitation of 3 months, sub-section (5) gives a discretion for the Tribunal to condone the delay. No outer limit is prescribed, curtailing the power of Tribunal to condone the delay beyond a period.

5. On an appeal filed by the very same assessee against another order before another Bench of the Tribunal, the delay was

condoned, though the period of delay as far as the reasons for the delay were almost the same.

6. We have gone through the affidavit in support of the application for condonation of delay. We are satisfied that there was sufficient cause for the appellant. Therefore, the question of law is answered in favour of the appellant and the appeal is allowed and the delay in filing the appeal before the Tribunal is condoned. The Tribunal shall number the appeal and take it for disposal on merits.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

T. RAJANI, J

Date: 21-08-2017

Ksn