IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA-40-2016
DATE OF DECISION:17.01.2017

M/S LIFELONG MEDITECH LIMITED ... Appellant

V/S

COMMISSIONER OF CENTRAL EXCISE AND ST. DELHI-III

… Respondent

CEA-41-2016

M/S LIFELONG MEDITECH LIMITED ... Appellant

V/S

COMMISSIONER OF CENTRAL EXCISE AND ST. DELHI-III

… Respondent

CORAM:HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Amrinder Singh, Advocate
for the appellants.

Mr. Anshuman Chopra, Advocate
for the respondents.

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S.J. VAZIFDAR, C.J. (ORAL)

These are appeals under Section 35 (G) of the Central Excise Act against the order of the CESTAT. Both the appeals were dismissed on the ground that they were filed beyond the period of limitation. In CEA No.41 of 2016, the appellant's appeal was also dismissed on the ground that it ought to have been filed under the Finance Act, 1994 and not under the Central Excise Act.

The first question of law that arises is whether the Tribunal rightly dismissed the appeals on the ground of limitation?

As far as CEA No.40 of 2016 is concerned, the Tribunal held that the order passed by the Assistant Commissioner was dated 04.01.2013 and the appeal was filed before the Commissioner (Appeals) on 08.03.2013 i.e. beyond the period of 60 days prescribed under Section 85 (3A) of the Finance Act, 1994. It is true that no application for condonation of delay was made. The appellant's case however is that there was in fact no delay for the period of limitation commences not from the date of order but from the date of the receipt of the decision or order. The petitioner contends that the order was received only on 07.01.2013. If that is so, the appeal will be within time. The order was admittedly sent by RPAD. It is reasonable to presume that the same would not have been received by the assessee on the same date. The dispute is only of two days. The Tribunal ought to have at least asked the Department to produce the RPAD receipt. The Tribunal should not have considered 4th January to be the starting date for the period of limitation. A presumption can also be drawn under Section 27 of the General Clauses Act, 1897 which reads as under:-

> *"27 Meaning of service by post. Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression serve or either of the expressions give or send or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have*

> *been effected at the time at which the letter would be delivered in the ordinary course of post."*

It is reasonable to presume that in the ordinary course of post, a letter sent RPAD would have been delivered three days later. This is a statutory presumption. It was therefore for the Department to have proved otherwise. The question of law so far as CEA No.40 is concerned, is therefore answered in favour of the appellant. The appeal shall now be heard by the Commissioner (Appeals) on merits.

As far as CEA No.41 of 2016 is concerned, there is admittedly a delay of two days in filing the appeal before the Commissioner (Appeals). We appreciate that the delay is minimal. But delay there is. The appellant ought to have at least explained the delay and sought condonation thereof. Before us, it was contended for instance that the orders were served at the appellant's premises in which a fire had broken out. The appellant was now functioning from a different address, although the correspondence continues to be received at the earlier address. This would indeed be a reasonable ground for condoning a delay of a mere two days. However, an application to that effect, if true, ought at least to have been made. The ends of justice however, require that the appellant is given an opportunity of doing so before the Commissioner (Appeals) itself.

CEA No.41 of 2016 is therefore disposed of by setting aside the order and by granting the petitioner an opportunity of filing an application for condonation of delay which shall be considered if the same is filed within four weeks from today.

The next issue which arises only in CEA No.41 of 2016 is whether the appeal ought to have been filed under the Finance Act or under the Central Excise Act? The appellant is at liberty to agitate that issue also afresh before the Commissioner (Appeals) who is the appellate authority under both the Acts. The Tribunal did not deal with this issue as it had dismissed the appeal on the ground of limitation alone.

The appeals are accordingly disposed of.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

17.01.2017
SwarnjitS

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No