HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHAVA RAO

CENTRAL EXCISE APPEAL No.220 OF 2018

JUDGMENT: *(Per Hon'ble Sri Justice V. Ramasubramanian)*

Aggrieved by the dismissal of an application for condonation of the delay of 96 days in filing an appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), the Assessee has come up with the above appeal under Section 35G of the Customs Act, 1962.

2. Heard Mr. S. Vivek Chandrasekhar, learned counsel for the appellant and Mr. B. Narasimha Sarma, learned Senior Standing Counsel for the respondent - Revenue.

3. By an Order-in-Original, dated 06.01.2017, the 1st respondent made a demand of service tax for the taxable services provided by the appellant, as per the proviso to Section 73 (1) of the Finance Act, 1994. Interest and penalty under different sections of the Finance Act, 1994 were also imposed.

4. The appellant preferred an appeal before the CESTAT, along with an application for condonation of the delay of 96 days. The said application was dismissed by the Tribunal forcing the assessee to come up with the above appeal.

5. In view of the limited nature of the dispute raised in the appeal, the one and only substantial question of law that arises for consideration in the above appeal is as follows:

> "Whether the Tribunal was justified in dismissing the appeal without condoning the delay despite the fact that the delay has been explained properly?"

6. In the affidavit in support of the application for condonation of delay, the appellate stated two reasons as the cause for the delay; (i) that the person, who was handling the work, was suffering from ill health due to which he could not attend the office; and (ii) that the amount required to be deposited as per the provisions of Section 35F could not be gathered.

7. The medical certificate of the person, who filed the affidavit on behalf of the appellant, was produced and the genuineness of the same was not disputed by the Tribunal. But, the Tribunal held that the medical certificate did not instill any confidence as no reasons were assigned except stating that he was suffering from leg pain. Insofar as the delay in making arrangement of the pre-deposit amount is concerned, the Tribunal found that the appellant's office/corporate office is at Hyderabad and, therefore, they could have taken the decision early and that the affidavit did not indicate any financial stress on the appellant for generating the amount to be deposited, and that therefore it was not a case for condonation of delay.

8. Though the aforesaid reasons stated by the Tribunal could not be held entirely to be arbitrary, we think that the appellant cannot also be held to be wholly negligent in pursuing a statutory remedy.

Once there is no dispute that the person, who was dealing with the matter, could not attend the office due to ill-health and it is supported by medical certificate filed along with the application, the Tribunal could have taken a liberal approach. The delay in this case is not abnormal but only 96 days.

9. As a matter of fact, the appellant has already filed a VCES application and paid the entire service tax liability. Therefore, the refusal of the Tribunal to condone the delay appears to be harsh.

10. Therefore, the question of law is answered in favour of the appellant and the appeal is allowed. The delay in filing the appeal before the Tribunal is condoned. The Tribunal is directed to number the appeal and take up the same for disposal in accordance with law. However, there shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, shall stand closed.

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V. RAMASUBRAMANIAN, J

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P. KESHAVA RAO, J

December 27, 2018
KTL/Mgr