THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

<u>CENTRAL EXCISE APPEAL No.241 of 2017</u>

<u>04.01.2018</u>

Between:

Bank of India,
Mid Corporate Bank, Visakhapatnam

..Appellant

and

Customs Excise & Service Tax Appellate Tribunal,
Regional Bench, Hyderabad and others

..Respondents

Counsel for the appellant: Mrs.T.Vidya Rani

Counsel for the respondents: --

The Court made the following:

<u>JUDGMENT</u>: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This appeal by the assessee raises the following substantial questions of law.

> "1. Whether the order of the CESTAT is correct in law, facts and circumstances of the case.
>
> 2. Whether the CESTAT violated rule of natural justice and failed to appreciate the facts that when the entire city was damaged with the calamity of cyclonic storm and the records/files of the appellant bank were drowned in the water, the respondent No.1 should have taken the judicial notice of the said fact.
>
> 3. Whether the CESTAT is correct in not giving the opportunity to get into the disputed issues, ignoring the fact of Cyclonic storm damaged in the entire city.
>
> 4. Whether Section 5 of the Limitation Act can be invoked by applicant bank to seek condonation of delay.
>
> 5. Whether Section 27 of General Clauses Act is not application (applicable) for presumption of service of notice on the appellant when notice is not properly addressed to the appellant bank.
>
> 6. Whether Section 114 of Indian Evidence Act is applicable for presumption of proof."

2. The appellant is the assessee registered for payment of service tax. In connection with availment of input credit, a demand of Rs.16,89,164/- was raised by the Revenue against the appellant. After following the procedure, an order was passed on 25.08.2014 by the competent authority. Feeling aggrieved by the said order, the appellant filed an appeal before the Commissioner (Appeals), Visakhapatnam on

10.12.2015. The said appeal was dismissed on the ground that the same was filed beyond the condonable period of limitation. The said order having been confirmed by the Customs, Excise and Service Tax Appellate Tribunal (for short 'CESTAT'), the unsuccessful appellant has filed this appeal.

3. We have heard Mrs.T.Vidya Rani, learned counsel for the appellant, and perused the record.

4. It is borne out from the record that while the original order was passed on 25.08.2014, the appellant filed an appeal before the Commissioner (Appeals) on 10.12.2015. It is not in dispute that the limitation for filing the appeal before the Commissioner (Appeals) is 30 days and the appellate authority is vested with the power to condone the delay of one month only. The appellant pleaded that the order copy was received by it only on 26.10.2015 and that the appeal filed on 10.12.2015 falls within the condonable period of limitation by the Commissioner (Appeals). It is evident from the order of the CESTAT that on the direction given by it, the authorized representative of the Revenue produced the copies of covering letter issued along with the order in original and the copy of acknowledgement card, which was verified by the counsel before the CESTAT appearing for the appellant and that the stamp on the acknowledgement card shows that the appellant received the order copy on 17.09.2014 and the acknowledgement card was received back by the department on 22.09.2014. Based on this material, the CESTAT rendered a categorical

finding that the fact that the appellant received the order in original on 17.09.2014 sufficiently establishes that the plea of the appellant that it received the order copy only on 26.10.2015 was factually wrong. The CESTAT also rejected the plea raised by the appellant that the seal on the acknowledgement card would show that the corporate banking branch appeared to have received the order copy. It has observed that the seal contained the words "Bank of India, Visakhapatnam" and that hence there was sufficient service to the appellant. The CESTAT also relied upon the judgment of the Supreme Court in **Singh Enterprises vs. CCE, Jamshedpur**[1] in support of its conclusion that the appellate authority has no power to condone the delay beyond one month.

5. At the hearing, the learned counsel for the appellant has tried to impress upon this Court to interfere with the order of the CESTAT by stating that by *hud-hud* cyclone, the entire office records of the appellant were destroyed and that therefore, the CESTAT ought to have exercised its discretion by invoking Section 5 of the Limitation Act, 1963. We are afraid, we cannot accept this submission.

6. In the first place, the plea that the documents got misplaced in *hud-hud* cyclone runs contrary to the basic stand taken by the appellant that it received the order copy only on 26.10.2015. It is not the pleaded case of the appellant that it received the order copy on 17.09.2014 and that due to the said cyclone, the same was misplaced. The appellant cannot be permitted to raise a contrary plea as an alternative plea.

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[1] 2008 (221) E.L.T. 163 (S.C.)

Once it is found that the appellant's plea that it received the order copy only on 26.10.2015 as false, the question of entertaining any alternative plea does not arise. Even otherwise, as held by the Supreme Court in **Singh Enterprises** (supra), irrespective of the reasons assigned by the party, the Commissioner(Appeals) has no power or authority to condone delay beyond the period of one month as laid down under the statute.

7. For the aforementioned reasons, all the substantial questions of law raised by the appellant are answered against it. The appeal is, accordingly, dismissed.

C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

04th January, 2018
GHN