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

* HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
* HONOURABLE SRI JUSTICE P. KESHAVA RAO

+ C.E.A.No.216 of 2018

% Date: 19-12-2018

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, Andhra Pradesh.

…Appellant

Vs.

Commissioner of Central Excise Service Tax & Customs,
Visakhapatnam – II Commissionerate,
Central Excise Building, Port Area,
Visakhapatnam – 530 035, Andhra Pradesh.

…Respondent

!Counsel for Appellant : Mr. A.V.A. Siva Kartikeya

^ Counsel for Respondent :

< GIST:

> HEAD NOTE:

? Cases referred

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHAVA RAO

C.E.A.No.261 of 2018

JUDGMENT: (Per VRS,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 1434 days. The appeal before the Tribunal was under Section 35B of the Act. Though sub-section (3) of Section 35B prescribes a period of limitation of 3 months, sub-section (5) gives discretion for the Tribunal to condone the delay. No outer limit is prescribed, curtailing the power of the 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 and 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. There shall be no order as to costs.

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

V. RAMASUBRAMANIAN, J.

P. KESHAVA RAO, J.

19th December, 2018
Js.

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHAVA RAO

C.E.A.No.261 of 2018

(Per VRS,J)

19th December, 2017

Js.