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

CENTRAL EXCISE APPEAL No.219 OF 2018

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

Aggrieved by the dismissal of an application for condonation of delay of 350 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 Central Excise Act, 1944.

2. Heard Ms. Kiran Mayee, 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 23.01.2015, 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 350 days. The said application was dismissed by the Tribunal forcing the assessee to come 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 adopting a pedantic approach in the matter of condonation of delay?”

6. In the affidavit in support of the application for condonation of delay, the appellate pleaded that his brother died leaving the family in distress and that therefore there were some difficulties in organizing the affairs of his business.

7. The death certificate of appellant’s brother was produced and the genuineness of the same was not disputed before the Tribunal. But, what the Tribunal did was to hold that the demise of the appellant’s brother happened before the Order-in-Original was received and that therefore it was not a case for condonation of delay.

8. We do not know how the death of the appellant’s brother a few days before the receipt of the Order-in-Original could be a valid ground to reject the reasons for the delay. In any event, the Order-in-Original was dated 23.01.2015. The appellant’s brother died on 13.02.2015. The appellant stated that the family was in a state of shock and that prompt action could not be taken.

9. Once it is not disputed that the appellant’s brother died after the order was passed but before it was received, we see no reason as to how the service of the copy of the order before the death of the appellant’s brother would make things different.

10. 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 contrary to law and unjustified.

11. 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.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

December 27, 2018
KTL/Mgr