IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCIAL APPEAL NO. 16 OF 2019

Vishal Enterprises .. Appellant

v/s.

Commissioner of Central Taxes,
Pune-II, .. Respondent

Mr. Bharat Raichandani a/w Ms. Pragya Koolwal I/b UBR Legal for the appellant
Mr. Karan Adik a/w Ms. Maya Majumdar for the respondent

CORAM : A.S. OKA &
M.S. SANKLECHA, J.J.

DATED : 9th APRIL, 2019

P.C.

1. This appeal under Section 35G of the Central Excise Act, 1944 (the Act) challenges the order dated 27th August, 2018 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal).

2. The Revenue urges the following questions of law for our consideration :-

(a) Whether in the facts and circumstances of the case and in law, the Tribunal was correct and justified in dismissing the application seeking condonation of delay in filing the appeal on the ground that the medical certificate produced by the appellant was

not supported by documentary evidence without putting the appellant's to notice as to which additional documentary / corroborative evidence was required in support of its bonafide claim when the appellant had filed an affidavit in support of the medical certificate?

(b) Whether in the facts and circumstances of the case and in law, the Tribunal was correct and justified in dismissing the application seeking condonation of delay in filing the appeal on the ground that the medical certificate has been issued by a pediatric surgeon failing to appreciate that a pediatric surgeon is also a medical practitioner i.e. MBBS fully competent to examine the back condition of the proprietor of the appellant?

(c) Whether in the facts and circumstances of the case and in law, the Tribunal was correct and justified in dismissing the application seeking condonation of delay in filing of the appeal ignoring and not giving any finding on the affidavit filed by the proprietor of the appellant company in support and in addition to the medical certificate?

3. The appeal is admitted on the above substantial question of law. On 4th April, 2019, the parties were put to notice that the appeal itself would be disposed of on the above questions finally today. The advocate for the respondent at that time waived service. Therefore, we took up the appeal itself for final disposal.

4. As is evident from the questions, the basic/ primary issue is only whether the Tribunal was justified in dismissing the appellant's appeal on account of delay of 188 days in filing the appeal before it.

5. The appellant in its application for condonation of delay of 188 days in filing the appeal had stated that the delay was because he was suffering from back pain and had been advised rest. Being a sole proprietor, the work of filing the appeal from the impugned order could not be attended to, leading to the delay. The application was supported by an affidavit and a doctor's certificate.

6. The impugned order of the Tribunal while rejecting the condonation application, dismissed the appeal. This by holding that the reasons given for not filing the appeal in time, mainly the proprietor being bed ridden in view of the fact that he was suffering from back pain, is not supported by medical evidence. It is to be noted that the Medical Certificate produced by the appellant in support of his back pain, was of a Paediatric surgeon. Thus, the Tribunal doubted the genuineness of the reasons made out by the appellant for the delay in filing the appeal. This resulted in dismissal of the condonation of delay

application on the ground that the delay was attributable to the negligence of the appellant. Resultantly, the appeal was also dismissed.

7. We note that the Tribunal found the delay in filing the appeal was not satisfactorily explained by the appellant. This essentially on the ground that the evidence to support the inability to attend work due to back pain was a medical certificate issued by a Paediatric Surgeon. It was in the above circumstances, the Tribunal took a view that the delay does not deserve to be condoned.

8. However, we note that the Paediatric Surgeon is also a qualified doctor and is competent to issue a certificate with regard to a person suffering from back pain and advise a patient to take rest. No bar in terms of Medical Council Rules or otherwise is relied upon to disregard the view of the medically qualified person. It is true that if on these facts, the appellant had shown himself to a specialist, dealing with back pain and produced a certificate in support thereof, the Tribunal may have been satisfied with the evidence in support. Thus, the view taken by the Tribunal may be a possible view. However, in case of doubt, the benefit, if any, must go in favour of the appellant. We do feel in matters such as these, a more liberal approach should be adopted as

nobody gains by delaying filing of an appeal and when the reasons for the delay is a plausible reason which is not alleged to be untrue then the ends of justice would require condoning the delay and by considering the issue on merits.

9. However, on these facts, the condonation of delay can only be allowed on payment of costs. This for the reason that on facts, we find the view taken by the Tribunal is a plausible view and we would not have interfered. But only to ensure that justice is done, we are interfering. Thus, to balance the right and equity while considering the delay, we direct the appellant to pay a cost of Rs.20,000/- to the Commissioner of Central Excise within a period of two weeks from the date on which the order is uploaded.

10. On the aforesaid payment being made to the satisfaction of the Tribunal, the appeal of the appellant would be restored to the file of the Tribunal. Thereafter, the Tribunal would hear the appeal on merits after condoning the delay.

11. Needless to state that if the amount is not deposited within the stipulated time, this appeal shall stand dismissed without further

reference to the Court.

12. The appeal is allowed subject to the payment of costs of Rs.20,000/- to be paid to the Commissioner of Central Excise within a period of two weeks from the date on which the order is uploaded.

(M.S. SANKLECHA, J.) **(A. S. OKA, J.)**