IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A No. 2109 of 2019
&
C.M.P.No.8144 of 2019

M/s.Zak Trade Fairs & Exhibitions Pvt.Ltd.,
No.49, Veerabadran Street,
Nungambakkam,
Chennai - 600 034. ... Appellant/Appellant

-Vs-

The Commissioner of GST & Central Excise,
Newry Towers, No.2054-I,II Avenue,
12th Main Road, Anna Nagar,
Chennai - 600 040. ...Respondent/Respondent

Civil Miscellaneous Appeals filed under Section 35G of the Central Excise Act, 1944 against the Final Order No.40026 of 2019 dated 07.01.2019 in Appeal No.ST/42281/2018-SM passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in the matter of appeal against the Order-in-Appeal No.34 of 2015 (STA-II) dated 05.03.2015 passed by the Commissioner of GST & Central Excise (Appeals II), Chennai.

For appellant : Mr.Hari Radhakrishnan

For respondent : Mr.A.P.Srinivas,
Senior Standing Counsel

JUDGMENT
[Judgement of this Court was delivered by T.S.SIVAGNANAM.,J]

This Appeal by the assessee is directed against the final order passed by the Customs, Excise Service Tax Appellate Tribunal in Final Order No. 40026 of 2019 dated 07.01.2019 in Appeal No.ST/42281/2018-SM.

2. This appeal has been filed raising the following Substantial Questions of Law:

> "(i) Whether the tribunal had erred in dismissing the appeal filed for condonation of delay without following the principles laid down by the Hon'ble Supreme Court in the case of Coolector, Land Acquisition Anantnag & another Vs. MST Katiji & others [reported in 1987(28) ELT 185] and Esha Battacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & others [reported in (2013) 12 SCC 649].
>
> (ii) Whether the Tribunal erred in denying the appellant of its substantive right of appeal granted under the proivisions of Finance Act, 1994."

3. We have heard Mr.Hari Radhakrishnan, learned counsel for the appellant and Mr.A.P.Srinivas, learned Senior Standing Counsel, who accepts notice for the respondent. With the consent of either side, the appeal is taken up for final disposal.

4. The Tribunal by the impugned order, dismissed the appeal filed by the appellant on the ground that it is barred by limitation and the appellant has failed to show sufficient cause for condonation of the delay.

5. Mr.Hari Radhakrishnan, learned counsel for the appellant would contend that the Tribunal ought to have taken note of the decision of the Hon'ble Supreme Court in the case of Esha Battacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & others [reported in (2013) 12 SCC 649] and should have been adopted a liberal, pragmatic and justice oriented approach. In the impugned order, the Tribunal found that there is inordinate delay of 1,103 days and the reason assigned by the appellant is flimsy and will not connote sufficient cause.

6. We cannot differ with the finding recorded by the Tribunal because the delay is 1,103 days and the explanation offered is that some of the employees/managers have left the establishment and they did not bring to the notice of the appellant/management about the order in appeal, dated 05.03.2015. Therefore, we would have been well justified in confirming the order passed by the Tribunal in dismissing the appeal. However, bearing in mind the fact that the appellant has paid the entire tax liability and the only thing that remains to be paid is the penalty which has been quantified at Rs.5,38,595/-, we deem it appropriate that this is a case where discretion can be exercised for condonation of the delay.

7. We make it clear that this order shall not be treated as precedent, since this order is passed taking note of the peculiar facts and circumstances of the case, so as to enable the appellant to prosecute their appeal before the Tribunal and we also propose to impose further condition.

8. In the result, the appeal is allowed and the order passed by the Tribunal is set aside, subject to the condition that the appellant deposits a sum of Rs.2,50,000/-(Rupees Two Lakhs Fifty Thousand only) before the Adjudicating Authority, within a period of two weeks from the date of receipt of copy of this order and upon such deposit and filing the original deposit receipt/challan in the Registry of the Tribunal, the delay in filing the appeal before the Tribunal shall stand condoned and the Tribunal shall entertain the appeal and decide the same on merits and in accordance with law.

9. In the result, this civil miscellaneous appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrm
To

1. The Commissioner of GST & Central Excise,
Newry Towers, No.2054-I,II Avenue,
12th Main Road, Anna Nagar, Chennai - 600 040.

2. The Commissioner of GST & Central Excise (Appeals-II),
Chennai.

3. The Commissioner,
Customs Excise & Service Tax,
Appellate Tribunal, South Zonal Bench, Chennai.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.32188
+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.32549

C.M.A No. 2109 of 2019
&
C.M.P.No.8144 of 2019

SSI(CO)
CS/10/06/2019