IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.4606 of 2014
and
W.P.M.P.No.1 of 2014

Alstom T & D India Limited,
19/1 GST Road, Pallavaram,
Chennai 600 043
Represented by its Senior Manager-Indirect Taxes,
Mr.S.Sivaramakrishnan ... Petitioner

Vs.

1.Commissioner of Central Excise (Appeals),
Office of the Commissioner of Central Excise(Appeals),
Large Tax Payer Unit,
1775, J.N.Road, Anna Nagar,
Chennai - 600 101.

2.The Deputy Commissioner of Central Excise,
Larger Taxpayer Unit,
Chennai - 600 101. ... Respondents

Prayer: Writ Petition is filed under article 226 of the Constitution of India, writ of Certiorari, call for the records of the respondent in A.No.07/2012)P) in order in Appeal No.34/2013 dated 08.10.2013 passed by 1st respondent and quash the same.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.A.P.Srinivas

O R D E R

In this writ petition, the petitioner has challenged the impugned order passed by the 1st respondent Commissioner of Central Excise (Appeals). By the impugned order, the 1st respondent Commissioner of Central Excise (Appeals)has rejected the appeal filed by the appellant merits while tacitly condoning the delay in filing the appeal on the ground that the appeal filed belatedly with a delay of 22 days. While dismissing the appeal on merits, the 1st respondent Commissioner of Central Excise (Appeals) has made the following observation:-

> "In this case, except for the inaction and negligence of the staff, there are no other reasons for filing a belated appeal. Delays result of total lack of prudence. Timely action is the essence of day-today activities of human being-a farmer not sowing his field in time after the rain has to suffer. No action was taken by the assessee for a long period to follow up his appeal."

2. The learned counsel for the petitioner submits that the delay was within the statutory period of time which the delay could be condoned by the 1st respondent and therefore the 1st respondent ought not to have made in the above observation casting aspersions on the conduct of the counsel who had indeed filed an affidavit stating that the delay was on their part.

3. The learned counsel for the petitioner further submits that the Department files repeatedly appeals with a delay of longer period than the delay mentioned in their appeal by casually shifting the burden on the counsel for mixing up of the files and therefore it will not open for the 1st respondent to such remarks.

4. Per contra, the learned counsel for the respondents submits that the order is well reasoned. He further submits that though the above observation has been made in the impugned order, the impugned order has been passed on merits. Therefore, the present writ petition is liable to be dismissed.

5. I have considered the arguments of the learned counsel for the petitioner and the respondents.

6. The impugned order has been passed on merits. Nevertheless there are indications that because there was a delay in filing the appeal before the learned Commissioner of Central Excise (Appeals) was influenced by the observations extracted above while passing the impugned order. The proper matter would have been to 1st condone the delay and thereafter as a separate order on merits.

7. Under these circumstances, I am inclined to set aside the impugned order and remit the case back to the 1st respondent to pass a speaking order on merits alone without making any observation on the conduct of the learned counsel for the petitioner in preferring appeal beyond the period of 22 days.

8. Since the amount involved is meager, the learned Commissioner of Central Excise (Appeals) is directed to pass a speaking order on merits within a period of 30 days from date of receipt of copy of this order. Needless to state before passing such order in the de novo proceedings, the petitioner or their counsel shall be heard.

9. Writ petition stands disposed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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Chennai - 600 101.

2.The Deputy Commissioner of Central Excise,
Larger Taxpayer Unit,
Chennai - 600 101.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No. 10170
+1cc to Mr.Joseph Prabakar, Advocate, S.R.No. 101098

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and
W.M.P.No.1 of 2014

SSD(CO)
GN(03/03/2020)