

CMP No. 18191 of 2019
in CMA Sr.No. 78515 of 2016

S.MANIKUMAR, J.,
AND
P.RAJAMANICKAM, J.,

[Order of the Court was made by S.MANIKUMAR, J.]

Civil Miscellaneous Appeal in CMA SR.No. 78515 of 2016 has been filed against final order No.153/2012 dated 02.03.2012 passed by the first respondent (Customs, Excise & Service Tax Appellate Tribunal, Chennai). The papers were returned to carry out the defects on 26.10.2016. However, the same was done on 03.02.2017 resulting in a delay of 88 days in re-presenting the writ appeal. Seeking condonation, CMP.No. 18191 of 2019, is filed. The reasons assigned in para Nos.5 to 7 of the supporting affidavit in CMP.No.18191 of 2019 are as follows:-

“5. He further submit that after the resubmission of the appeal papers along with the verified petition, the Registry once again on 03.04.2017 returned the said Appeal papers by raising fresh objections by which they were asked to incorporate the prayer portion in the grounds and also to file a delay petition with affidavit. The appellant submits that their junior advocate met the concerned official at the registry and explained to the official since the appeal is a statutory appeal arising under Section 130(1) of the Customs Act the form prescribed under the Act has been correctly adopted and

that there is no delay in the filing of the appeal since the certified copy of the impugned order was furnished to the appellant only on 07.10.2016 and the Civil Miscellaneous Appeal under Section 130(1) of the Customs Act was preferred on 20.10.2016 within thirteen days as against the time of six months provided under Section 130 of the Act and therefore there is no delay warranting the filing of the condonation of delay petition but the official was reluctant to accept the papers on resubmission.

6. He further submit that in between the junior counsel who was dealing with the matter had left the office without handing over the papers in his possession and the whereabouts of the papers were not known to us various efforts were taken in this regard and only after repeated contact and persuasion the papers could be traced and obtained from the junior which had caused the delay in the representation of the appeal papers with a delay of 808 days which is neither willful nor wanton but due to the above genuine reasons only.

7. He further submit that the above delay had been caused only due to the inadvertence of the junior dealing with the matter and there was no fault or short coming on the part of the petitioner/appellant and if the delay is not condoned due to their fault undue hardship and loss would be caused to the Petitioner/appellant which may not be desired in the interest of justice. He further submit that the issue

involved in the appeal had already been held in favour of the appellant and therefore they have a very fair and strong case to succeed in their appeal.”

2. Heard, Mr.N.Viswanathan, learned counsel for the Petitioner and Mr. T. Pramod Kumar Chopda, learned Standing Counsel for the Respondents who also contended that payment of cost, if any, may be ordered by this Court.

3. Having regard to the reasons assigned, on the grounds of a delay, we are of the view that delay of 888 days in re-presenting the appeal in CMA SR.No.78515 of 2016 can be condoned subject to payment of costs of Rs.5,000/- (Rupees Five Thousand Only), to the account of **Juvenile Justice Fund, Director of Social Defence, Ministry of Social Welfare, Government of Tamilnadu, Kellys, Kilpauk, Chennai-600 010**. Learned counsel for the appellant himself fairly agreed for the quantum. Hence, CMP.No. 18191 of 2019 in CMA. SR. No.78515 of 2016 to condone the delay of 888 days in re-presenting the prayers, is ordered subject to payment of costs of Rs.5,000/- to the account of **Juvenile Justice Fund, Director of Social Defence, Ministry of Social Welfare, Government of Tamilnadu, Kellys, Kilpauk, Chennai-600 010**, within a period of two weeks from the date of receipt of a copy of this order.

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4. It is made clear that if cost is not paid, within the above said period, CMP.No. 18191 of 2019 would stand dismissed, without any further reference to this Court. On payment of costs of Rs.5,000/- and production of cost memo, Registry is directed to number the appeal, if it is otherwise in order and post the same for admission.

[S.M.K.,J.] [P.R.M., J.]
09.09.2019

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