IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CEA No.44 of 2018

Date of Decision:-16.07.2019

M/s Venky's India Ltd.

......Appellant.

Versus

Commissioner, Central Goods & Services Tax.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA

Present:- Mr. Jagmohan Bansal, Advocate for the Appellant.

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JASWANT SINGH, J.(ORAL)

Present appeal has been filed by the appellant-manufacturer under Section 35G of the Central Excise Act, 1944 (for short the 'Act') seeking quashing of the order dated 21.03.2018 (Annexure **A-8**) passed by the Customs Excise and Service Tax Appellate Tribunal, Chandigarh (for short the Tribunal).

The appellant is engaged in the manufacture of Corrugated Boxes. The Central Excise department issued show cause notice dated 15.07.2008 (**A-2**) calling upon the appellant to show cause as to why duty amounting to Rs.12,48,959/- for short payment of duty for the period 01.06.2007 to 30.09.2007 should not be recovered under Section 11A of the Act. Subsequently another show cause notice dated 18.12.2008 (**A-3**) was issued, whereby duty amounting to Rs.5,32,493/- towards short payment of duty for the period October 2007 to 07.12.2007 was demanded. The adjudicating authority vide a common order dated 25.02.2009 (**A-4**) dropped the demand. The respondent-department filed an appeal which was partially decided in their favour vide order dated 15.03.2010 (**A-5**) passed by Commissioner (Appeals), Custom and Central Excise, Chandigarh.

The respondent department as well as the appellant filed an appeal before the Tribunal. The department filed appeal within time whereas the appellant filed appeal along with an application seeking condonation of delay of 2743 days. The learned Tribunal has dismissed the appeal vide the impugned order dated 21.03.2018 (**P-8**) on the ground of delay. Hence the present appeal.

Counsel for the appellant has argued that initial the appellant-company took a decision not to file an appeal, however, on the receipt of notice of hearing in the appeal filed by the department before the Tribunal in the year 2017, the issue was reconsidered and a decision was taken to file an appeal. Hence the delay which had occurred is urged to be bonafide.

After hearing counsel for the appellant, we are not inclined to agree. To a pointed query it is not denied that notice of the appeal filed by the department had been received by the appellant in the year 2010 itself, therefore, mere fresh receipt of the notice of the date of hearing issued by the Tribunal would not constitute a sufficient ground at all to urge that fresh cause of action had accrued so as to condone the previous delay since the year

2010 upon taking up a fresh decision to file an appeal. We find that the reasons recorded by the Tribunal in not condoning such a huge delay of 2743 days does not suffer from any infirmity.

In view of the above, no question of law much less substantial question of law arises for determination in the present appeal which is hereby dismissed.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

July 16, 2019
Vinay

Whether speaking/reasoned	***Yes/No***
Whether Reportable	***Yes/No***