$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 31st October, 2019

\+ SERTA 22/2019 and CM Nos.45479, 45480, 45481/2019

C P SYSTEM PVT LTD ..... Appellant

Through: Mr. O.P. Aggarwal, Mr. M.K. Khan, Mr. Ajay Kumar, Mr. Vijay Kumar Goswami and Ms. Priyansha Sinha, Advs.

versus

COMMISSIONER OF SERVICE TAX AUDIT-1 DELHI ..... Respondent

Through: Mr. Amit Bansal, Sr.Standing Counsel with Mr. Aman Rewaria, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

O R D E R

% **31.10.2019**

D.N. PATEL, CHIEF JUSTICE (ORAL)

SERTA 22/2019

1. The present appeal has been preferred challenging the order passed by CESTAT in Miscellaneous Application No. ST/COD/50663/2018 in ST/50787/2014 and Cross Objection Application No. ST/Cross/50662/2018 in ST/50787/2014 order of CESTAT dated 23rd July, 2019 which is at Annexure A-1 to the memo of this appeal, whereby delay of 468 days in preferring cross objections under Section 86(4) of the Finance Act, 1994 of this appellant was not condoned. Thus, there was a delay on the part of this appellant in filing cross objections. Before

the CESTAT, the said delay was not condoned and hence the present appeal has been preferred.

2. It appears that revenue had filed an appeal challenging order in original passed by the Commissioner of Service Tax. The appeal of the revenue is bearing no. 50787/2014 filed before CESTAT, New Delhi.

3. It further appears from the facts of the case that notice was issued by CESTAT, New Delhi in an appeal preferred by the revenue. Thereafter, again, the notice was issued by CESTAT, New Delhi upon this appellant. The said notice was dated 8th February, 2017 which was received by this appellant on 14th February, 2017.

4. If any cross objection is to be filed by this appellant before CESTAT, New Delhi, the same could have been filed within a period of 45 days from the date of the receipt of the notice under Section 86(4) of the Finance Act, 1994.

5. It further appears from the facts of the case that the period of limitation for filing of cross objection was over on the 31st March, 2017 and the cross objection was filed by this appellant before CESTAT, New Delhi on 20th July, 2018. Thus, there was a delay of 468 days and the said delay was not condoned by CESTAT, New Delhi as there were no reasonable reason for condonation of the delay.

6. Counsel appearing for the appellant submitted that there were financial difficulties with this appellant. For filing of such a cross objection, the documents of the year 2005 and 2006 were to be found, and therefore there was a delay in filing the cross objection. Counsel for the appellant has taken this Court to various annexures and the averments about the financial difficulties faced by the appellant.

7. Counsel appearing for the respondent submitted that in filing a cross objection, nominal court fees is required to be paid. It is also submitted by counsel for the respondents that looking at the condonation application preferred by this appellant before CESTAT, New Delhi, the reasons given were not sufficient at all for condonation of delay of 468 days in filing of the cross objection. Moreover, on various dates, the matter was adjourned at request of counsel for the appellant before CESTAT, New Delhi. This time could have been utilised for filing of the cross objection. Several lawyers have appeared before CESTAT, New Delhi on behalf of this appellant and despite that, cross objections have not been filed. Hence, it is submitted by counsel for the respondents that looking to the reasons given by CESTAT, New Delhi in the impugned order, this appeal may not be entertained because no substantial question of law has been raised.

8. Having heard counsel for both the sides and looking to the facts and circumstances, we see no reason to entertain this service tax appeal for the following reasons :

(i) The cross objections were filed by this appellant under Section 86(4) of the Finance Act, 1994 before CESTAT, New Delhi with delay of 468 days and there was no cogent reason for condonation of delay. Hence, CESTAT, New Delhi had not condoned the delay for filing of cross objections *vide* order dated 23rd July, 2019 (Annexure A-1 to the memo of this appeal), hence the present appeal has been preferred.

(ii) It appears that revenue had preferred an appeal before CESTAT, New Delhi in the year 2014 challenging order in original passed by Commissioner of Service Tax. The notices were issued by CESTAT, New Delhi by this appellant and lastly notice dated 8th February, 2017 was received by this appellant on 14th February, 2017. The period of limitation is 45 days for filing of the cross objection from the date of receipt of the notice by CESTAT, New Delhi. Thus, the time limit to file cross objection was over on 31st March, 2017. This appellant preferred cross objection on 20th July, 2018. Hence there was a delay of 468 days in filing of the cross objections.

(iii) The reasons given in the delay condonation application by this appellant before CESTAT, New Delhi especially in paragraph nos. 4,5,6,7 and 8 read as under :

> *"4. That Appellant company received notice of this Hon'ble Court issued in ST Appeal No. 50787 of 20l4 on 14.02.2017, and approached his counsel for filing of response thereof. However, due to financial crunch, the Applicant was not able to pursue the matter effectively.*
>
> *5. During March 2017, since the matter could not be pursued effectively, the Applicant Company engaged another Lawyer for contesting the case-.*
>
> *6. That owing to financial crunch resulting mainly from the fund illegally stuck by virtue of the impugned order, Applicant Company could not service its credit facility obtained from the HDFC and as a consequence, its account was declared NPA on 01.05.2017. On 22.02.2018, the credit facility stood withdrawn by the Bank. Presently, the Applicant Company is negotiating a One Time Settlement (OTS) with the Bank and the matter stand so awaiting liquidity inflow.*

7. In the meanwhile, since the Lawyers engaged during March 2017 did not pursue the matter effectively, the brief was transferred to the present counsel during the month of February 2018.

8. That office of the present counsel informed the Applicant company that apart from filing of reply, it would be advisable to file a cross appeal/Cross-Objection. Accordingly, all the records were requisitioned from the Applicant Company."

9. Looking to the aforesaid reasons, it appears that there are no reasonable reasons for condonation of delay. This aspect of the matter has been properly appreciated by CESTAT, New Delhi while deciding the delay condonation application of this appellant *vide* order dated23rd July, 2019 (Annexure A-1).

10. Counsel appearing for the appellant has submitted before this Court about the financial difficulties of this appellant which cannot be a reason for such a huge delay in filing the cross objections because the highest court fees to be paid is approximately ₹ 10,000/-, thus financial difficulty cannot be a ground for condonation of delay.

11. Moreover it is also submitted by counsel for the appellant that the record to be found out by this appellant was of the year 2005 and 2006. Hence, there was a delay in filing the cross objections. This also cannot the ground because the delay is of 468 days. Moreover several dates were given by the CESTAT, New Delhi, as many as eight adjournments which were sought by this appellant. Moreover counsels were also appearing on behalf of the appellant before CESTAT, New Delhi. The appeal of the revenue was filed much earlier in point of time and looking

to paragraph 5 of the delay condonation application as stated hereinabove, during March, 2017 since the matter could not be pursued effectively, this appellant engaged another lawyer for contesting the case. Thus, it appears that when this appellant was engaging lawyers who have appeared for as many as 9 dates before CESTAT, New Delhi, they could have filed cross objections within period of limitation.

12. Looking to the order of CESTAT, New Delhi, paragraph 15 thereof read as under :

> *"15. The delay sought to be explained by the Applicant is with regard to the second notice dated 08 February, 2017 that was sent by the Tribunal by speed post informing that the appeal filed by the Department would be listed before the Tribunal on 27th February, 2017. This notice dated 8 February, 2017 was received by the Applicant non 14 February, 2017. The period of 45 days prescribed for filing the Cross-Objection expired on 31 March, 2017. The cross-objection contemplated under Section 86(4) of the Act were required to be filed within 45 days. The order sheet reveals that the matter was regularly listed before the Tribunal on as many as nine occasions in 2017 and except for the order dated 22 August, 2017 which mentions that the matter was being adjourned to 27 September, 2017 (without indicating as to on whose behalf adjournment was granted), all the orders specifically mention that the matter was being adjourned on requests made on behalf of the Applicant by its Counsel. The Applicant was represented by many Counsel, as can be seen from the order sheet. The names*

of the Counsel are also mentioned. The delay condonation application mentions that the Counsel engaged by the Applicant in 2017 did not pursue the matter effectively. The applicant had obtained service tax registration under 'construction service' and had undertaken many construction activity. It was also represented by many Counsel. It is, therefore, not possible to accept the contention of the learned Counsel for the applicant that as the Counsel did not pursue the matter effectively, cross-objection were not filed and it was only when a new Counsel was engaged in 2018, and advice was given to file cross-objections, that cross-objections were filed on 20 July, 2018 with a delay of 468 days. This inordinate delay of 468 days has not been explained to the satisfaction of the Tribunal. It is no doubt true that each day's delay has not to be explained, but at the same time an Applicant is required to satisfy the Tribunal that there was sufficient period of 45 days. In the present case, we are more than satisfied that the Applicant has miserably failed to satisfy that there was sufficient cause in not filing the cross-objections within the stipulated period."

13. In view of the aforesaid reasons, the delay was not condoned. We are in full agreement with the reasons given by the CESTAT, New Delhi for not condoning the delay *vide* order dated 12th September, 2019, we see no reasons to take any other view. Hence, no substantial questions of law is involved in this appeal.

14. Hence, the appeal is hereby dismissed.

CM Nos.45479/2019, 45480/2019, 45481/2019

1. In view of the dismissal of the appeal, these applications also stand disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J.

OCTOBER 31, 2019/kr