IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HON'BLE DR. JUSTICE VINEET KOTHARI
and
THE HON'BLE MR. JUSTICE R.SURESH KUMAR

C.M.A.No.540 of 2020

M/s.Sri Steels
Old No.220/1, Linghi Chetty Street,
Chennai- 600 001. .. Appellant

..Vs..

1. The Commissioner of Customs, Refunds,
   Chennai IV Commissionerate
   Customs House, No.60, Rajaji Salai,
   Chennai- 600 001.

2. The Deputy Commissioner of Customs
   (Refunds), Custom House, NO.60, Rajaji
   Salai, Chennai-600 001. .. Respondents

Prayer : Civil Miscellaneous Appeal is filed under Section 130 of the Customs Act 1962, against the Final Order No.41024 of 2019 dated 16.08.2019 on the file of Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.B.Satish Sundar

For Respondent : Ms.R.Hemalatha
Senior Standing counsel

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The present Appeal has been filed by the Assessee, aggrieved by the order of the learned Customs, Excise & Service Tax Appellate Tribunal (CESTAT) dated 16.08.2019, whereby the learned single member of the Tribunal dismissed the application filed for condonation of delay. The relevant portion of the order passed by the learned Tribunal is quoted below for ready reference:

> "5. On perusal of the COD application, I see that appellant has not even mentioned the number of days of delay in the application. From the date of Order-in-Appeal, it is calculated to be about 4 1/2 years. Ld. Consultant for the appellant has submitted that the delay occured because the OIA was not communicated to them. On perusal of the OIA, as rightly pointed out by Ld.A.R, the Proprietor of the appellant firm Shri Vinod Kumar had attended the personal hearing on 26.03.2014. Thereafter, the Proprietor has not enquired about the outcome of their appeal. It is only on 29.01.2019 that the very same Proprietor Shri Vinod Kumar has filed the RTI application requesting for details of the OIA. In reply to the RTI query, the department has furnished the number and date of the OIA and also provied a copy of the same. The date of despatch is mentioned as 11.04.2014 and the mode of despatch is also shown as 'Speed Post'. The appellant has not preferred any appeal against the said reply furnished by the CPIO of the department under the RTI Act. Taking these facts into consideration, I am of the view that there has been inordinate delay on the part of the appellant to file the appeal. The plea put forward by the appellant that department did not inform them as to whether the matter was referred to call book etc. is not reflected anywhere in the records. There is mere assumption made by the appellant.
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> 6. From the discussions made above, I am of the view that there is huge delay in filing the appeal which remains unexplained by the appellant. COD application is dismissed. Consequently, the appeal is also dismissed.

2. The learned counsel for the Assessee Mr.B.Satish Sundar, submitted that even though the Order-In-Appeal is said to have been despatched by way of Speed post, there is no mention about acknolwedgment of the said order by the Assessee, in the Impugned Order of the Tribunal. In fact, the Assessee received the same only on filing the RTI application on 29.01.2019 and only after getting reply on 16.02.2019 along with copy of the

OIA, the Appellant filed the appeal within 60 days. But the learned Tribunal wrongly rejected the Application for the condonation of delay stating that the Order-in-Appeal was despatched on 11.04.2014 through Speed Post and there is a huge delay of 4 1/2 years in filing the Appeal. He therefore prays to set aside the Impugned Order of the Tribunal.

3. Having heard the learned counsels on either side,we find that the learned Tribunal has not mentioned anything about the acknowledgment of the speed post containing Order-In-Appeal, to the Assessee. If the order would have despatched in 'Speed post with Acknowledgment Due', the Department ought to have produced the Acknowledgment Card bearing the signatures of the Assessee. The learned Tribunal only got satisfied with the fact that the Order-In-Appeal was sent to the Assessee through Speed Post and has dismissed the Application for Condonation of dalay, without verifying the fact that the Order-In-Appeal has been received by the Assessee or not. Mere despatching of order does not imply the receipt of the same. If the Assessee would have received the order, it could have filed the Appeal in time. Therefore we are satisfied that the learned Tribunal was not justified in dismissing the Application on the ground of limitation. Time and again, the Higher Constitutional Courts direct the learned fact finding Tribunals below not to be trigger-happy to dispose of the cases for default of appearance or on mere delay. The Tribunals being the fact finding body is under a legal obligation to decide the Appeal on merits even upon hearing one of the sides and they cannot dismiss the appeals for such aforesaid reasons. Their duty to decide the case on merits is not removed for want of assistance from the side of parties before them.

4. In these Circumstances, we set aside the order passed by the learned Tribunal on 16.08.2019 and remand the matter back to the Tribunal for deciding the Appeal afresh on merits. We direct the learned Tribunal to decide the case on merits, in accordance with law.

5. In the result, this Civil Miscellaneous Appeal is allowed. No order as to costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

To

1. The Commissioner of Customs, Refunds,
   Chennai IV Commissionerate
   Customs House, No.60, Rajaji Salai,
   Chennai- 600 001.

2. The Deputy Commissioner of Customs
   (Refunds), Custom House, NO.60, Rajaji
   Salai, Chennai-600 001.

+1 CC to Mr.B.Satish Sundar, Advocate sr 12883.
+1 CC to Mrs.R. Hemalatha, Advocate sr 12759.

C.M.A.No.540 of 2020

PA(CO)
SP(13/03/2020)