IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM :

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE M.S.RAMESH

C.M.A.No.1385 of 2020

M/s.Seaswan Shipping & Logistics,
65/31, 3rd Floor, SMJ More Plaza,
Moore Street, Muthialpet,
Chennai 13,
rep. By its Partner Mr.Selvaraj ... Appellant

vs.

1.The Customs, Excise and Service Tax Appellate Tribunal,
Haddows Road, Shastri Bhavan, Annexe I Floor,
Chennai 600 006,
rep. By its Assistant Registrar,
Authority

2.The Commissioner of Customs,
Chennai VIII Commissionerate,
Customs House,Chennai 600 001 ... Respondents

Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, against the Final Order No.40545/2020 dated 26.02.2020 in COD/40659/2019 and Appeal No.C/41776/2019-SM.

For Appellant :: Mr.N.Viswanathan

For Respondents :: Mr.A.P.Srinivas,
Senior Standing Counsel

JUDGMENT

(Delivered by DR.VINEET KOTHARI, J.)

The present appeal has been filed by the Assessee aggrieved by the order dated 26 February 2020 whereby the learned Tribunal dismissed the Appeal of the Assessee only on the ground of delay in filing the same, which was as much as 764 days, from the date of impugned order of the learned Commissioner, who had imposed the penalty of Rs.50,000/- on the Appellant, a clearing and forwarding Agent, for the alleged violation of Regulation No. 11(a) and (n) of CBLR, 2013.

2. The relevant portion of the order of the Tribunal is quoted below for ready reference :-

> *7. The appellant has filed this application seeking condonation of 764 days in filing the appeal. The impugned order is passed on 12.10.2017 imposing penalty of Rs.50,000/- on the appellant. The finding made in the order is that the appellant violated Regulation 11(a) and (n) of CBLR, 2013. It is submitted by the counsel that the appellant initially had opted to to file appeal since he did not want to pursue the matter in litigation. Later, when he intended to expand his business to other ports, he apprehends that he would not be able to get no objection certificate for obtaining extension of license to other ports. Though it is sated that the appellant apprehends that he would not be able to obtain NOC, there is no evidence brought forth before me that he*

made any request and the same was rejected. It is merely his apprehension. He is still working as a Customs Broker. Further, as rightly pointed out by Id. AR, that if any order is passed rejecting the request for extension of license, the appellant has a remedy to file an appeal against such order. This ground raised by the appellant does not find favour with me.

8. The main contention put forward by the learned counsel is that the decision of the Hon'ble High Court of Delhi in the case of HM Logistics Pvt. Ltd. (supra) is in favour of the Customs Broker and would be applicable to the impugned order and for this reason the penalty imposed is not sustainable. It is settled position of law that merely because a decision which is in favour come to the notice, i cannot be a ground to seek condonation of delay. The appellant ha: failed to promptly avail the appeal remedy. Though law of limitation is not meant to destroy the right of parties, it cannot favour this who are sleeping. In the present case, the appellant has deliberately opted not to file appeal initially. Thereafter, this appeal is filed on on the advice given that the penalty can be set aside as per the decision of the Hon'ble High Court of Delhi. As discussed earlier there is no evidence to show that the livelihood of appellant is affected or his intention to expand business is interrupted.

9. I find that the appellant has not been able to

> *put forward sufficient cause to condone the delay. Further, the delay is more than two years. I find that the application for condonation of delay is without merits. The same is dismissed. Consequently, the appeal also gets dismissed.*

3. The learned Counsel for the Appellant submitted that the enquiry held by the Competent Authority gave the findings in favour of the Assessee that there was no mis-declaration on the part of the Assessee but however, the learned Commissioner did not agree with those findings and imposed the said penalty of Rs.50,000/- and the Tribunal dismissed the appeal only on the ground of delay which occurred for bona fide reasons which is mainly contended to be wrong legal advice given to the Appellant Assessee.

4. The learned Counsel for the Department does not seriously dispute this factual position about the finding of the enquiry officer in favour of the Assessee, however, he supports the impugned order, as the delay is huge.

5. Having heard the learned Counsel for the parties, we are of the opinion that for the fault of the advisor/counsel, the Assessee should not suffer and the fact finding bodies like Tribunal should make endeavour to decide the appeals

on merits, as far as possible rather than taking a pedantic approach of dismissing the appeals on the ground of delay, unless there is a gross delay and no sufficient reason is made out.

6. Keeping in view the fact that there was a finding against the Assessee about the alleged mis-declaration, for which penalty was imposed on the Assessee, we are of the view that the Final Appellate Authority under the Act, ought to have applied its mind to the merits of the case and then decide the appeal on merits. Accordingly, we are inclined to allow the present appeal of the Assessee. The impugned order of the Tribunal dated 28 April 2000 is set aside and the matter is remitted back to the learned Tribunal for deciding the appeal on merits and in accordance with law, after giving an opportunity of hearing to both the parties.

7. With this observation, the appeal is disposed of. There is no order as to costs.

(V.K.,J.) (M.S.R., J.)
16.10.2020

Internet : Yes/No.
tar

DR.VINEET KOTHARI, J.
and
M.S.RAMESH, J.

(tar)

To

1.The Assistant Registrar,
Customs, Excise and Service Tax Appellate Tribunal,
Haddows Road, Shastri Bhavan, Annexe I Floor,
Chennai 600 006

2.The Commissioner of Customs,
Chennai VIII Commissionerate,
Customs House,Chennai 600 001

C.M.A.No.1385 of 2020

16.10.2020