OD-46&47

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

CUSTA/3/2021
IA NO: GA/2/2021
COMMISSIONER OF CUSTOMS (PORT), KOLKATA
VERSUS
M/S. JHUNJHUNWALA VANASPATI LTD.

CUSTA/3/2021
IA NO: GA/1/2021
COMMISSIONER OF CUSTOMS (PORT), KOLKATA
VERSUS
M/S. JHUNJHUNWALA VANASPATI LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 8th December, 2021

Appearance :-

Mr. Bhaskar Prasad Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
...for the Appellant/Petitioner

Mr.Orijit Chatterjee, Adv.
Ms. S. Mukherjee, Adv.
... For Respondent

The Court : We have heard Mr. Bhaskar Prasad Banerjee, learned Standing Counsel for the appellant/revenue and Mr. Orijit Chatterjee, learned Counsel appearing for the respondent/assessee.

The appeal has been filed by the revenue with a delay of 878 days. We have perused the affidavit filed in support of the application for condonation of delay and we find that there is absolutely no explanation for the inordinate delay of 878 days in preferring the appeal. Though an attempt has been made by the Department to explain the delay, but a substantial period thereof remained unexplained. The Department proceeds to take advantage of the national lockdown, which does not enure to the benefit of them because the order of the Tribunal was passed on 23rd March, 2018, much prior to the lockdown.

Learned Counsel appearing for the respondent submitted that the respondent company has gone into liquidation, which fact was well within the knowledge of the Department. This is also one of the relevant matters which we have to take into consideration to examine the conduct of the Department in not preferring the appeal within the time limit and also not questioning about the subsequent events which have taken place. Hence, we find that there are no reasons to condone the inordinate delay of 878 days in filing this appeal.

We make it clear that when the court passes an order dismissing an application for condonation of delay, the same cannot stand reflected on the counsel for the Department to whom files were entrusted. In the case at hand we find from very inception the Department has not been diligent. Therefore, the question of condonation of delay would not arise in the instant case. Hence, the application for condonation of delay being GA/1/2021 is dismissed.

Consequently, the appeal being CUSTA 3/2021 also stands dismissed being time barred.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/Sbghosh
AR(CR)