IN THE HIGH COURT OF ORISSA AT CUTTACK

OTAPL No.24 of 2010

Balasore Alloys Limited	....	***Appellant***

Mr. Subrat Satpathy, Advocate

-versus-

The Assistant Commissioner & Another	....	***Respondents***

Mr. Avijit Pattnaik, Jr. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

ORDER
13.12.2022

Order No.

09. 1. The short issue as far as the present appeal is concerned, is whether the Commissioner (Appeals) and the Customs, Excise & Service Appellate Tribunal, Kolkata (CESTAT) were an error in declining to condone the delay in filing the appeal of the present Appellant before the Commissioner (Appeals) against an order dated 29th August, 2008 of the Assistant Commissioner-Central Excise, Customs & Sales Tax, Balasore Division. The Appellants informs the Court that pursuant to the direction issued by this Court in the present appeal on 29th March, 2012, 25% of the demand have been deposited with the Department by the Appellant.

2. From a perusal of the Memorandum of appeal and the petition filed for condonation of delay filed by the present Appellant before

the Commissioner (Appeals), it is seen that the appeal itself had been filed in Form No.ST-4, which is under the Finance Act, 1994 (FA) and not under the Central Excise Act, 1944 (CE Act). Admittedly, there was a delay of 56 days in filing the said appeal in Form-ST-4, but the attention of the Court has been drawn Section 85 (3) of the FA which permits the condonation of delay for justifiable reasons.

3. However, the Commissioner (Appeals) proceeded on the basis that the appeal is one under Section 35 of the CE Act and, therefore, concluded that since the appeal was filed beyond the outer limit of delay, it could not be condoned. The order dated 17th August, 2009 of the Commissioner (Appeals), noted the Appellant's argument that this was an appeal under the FA but declined to condone the delay on account of the illness of one of the Appellant's employees.

4. Interestingly, the covering note with which the appellate order was enclosed and dispatched to the Appellant, notes in paragraph-1(a) that an appeal could be filed before the CESTAT, Kolkata Bench "within three months of the date on which the Order sought to be appealed against is required by the Appellant in terms of Section 85 of Finance Act, 1994". Therefore, there is no denying the fact that the appeal had in fact been filed under the FA and the limitation, therefore, had to be determined in terms thereof. This point appears to have been over looked by the CESTAT when it dismissed the Appellant's further appeal.

5. In the considered view of the Court, the delay of 56 days in the Appellant filing the appeal before the Commissioner (Appeals)

under the FA ought to have been condoned as the reasons for the delay appear to be bonafide.

6. For the aforementioned reasons, this Court sets aside both the orders of the Commissioner (Appeals) as well as the CESTAT and restores the Appellant's appeal to the file of the Commissioner (Appeals).

7. The Appellants Appeal No.68/ST/BBSR-I/2009 will now be listed before the Commissioner (Appeals), Bhubaneswar on 9th January, 2023, on which date the Appellant will remain present through an authorized representative. The Commissioner (Appeals) should proceed to dispose of the said appeal in accordance with law, after hearing the Appellant and the Department, as expeditiously as possible and preferably within a period of four months thereafter.

8. The appeal is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

MRS/Laxmikant