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

% *Date of Decision: 19.04.2023*

\+ **CUSAA 230/2019 & CM APPL. 54192/2019 & CM APPL. 54194/2019**

COMMISSIONER OF CUSTOMS ..... Appellant

Through: Mr. Harpreet Singh, SSC with Ms. Suhani Mathur & Mr. Jatin Gaur, Advs.

versus

SADANAND CHAUDHARY ..... Respondent

Through: Counsel (appearance not given)

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The Revenue has filed the present appeal under Section 130(2A) of the Customs Act 1962, impugning an order dated 02.02.2018 passed by the Customs Excise and Service Tax Appellate Tribunal (hereafter 'the CESTAT'), whereby the punitive measures imposed on the respondent's Customs Broker License under the Customs Broker Licensing Regulations, 2013 was reduced to forfeiture of the security deposit. The allegation against the respondent is that he had failed to verify the antecedents and correctness of the Import-Export Code No., identity of his client and functioning of his

client at the declared address. It appears that the allegation against the importer was that it had overvalued the consignment imported for making fraudulent drawback claims.

2. Mr. Harpreet Singh, learned counsel appearing for the appellant, submits that the regulations contemplate two penalties – one, being revocation of license and forfeiture of security; and the second, being penalty. Any order by the learned CESTAT imposing a measure of forfeiture of security only is not permissible. He submits that the said question is also covered by the decision of the Coordinate Bench of this Court in ***Commissioner of Customs (General) v. KVS Cargo: CUSAA No. 122/2018*** dated 09.10.2018. In the said case, the Court refused to entertain the appeal because the role ascribed to the custom broker was one of carelessness and negligence. The Court also noted that the Commissioner appeared to have imposed almost impossibly high standards on the Custom Broker and therefore, dismissed the appeal. However, the aforesaid question was decided in favour of the appellant. Mr. Harpreet Singh submits that a similar order may be passed in this appeal as well.

3. Before we proceed to examine the controversy in the present appeal, it would be necessary for this Court to decide whether the delay in filing the same is required to be condoned. The present appeal was filed on 30.07.2019, which was after the delay of 307 days. The only explanation for the delay reads as under: -

> "3. That, the impugned order passed by the learned Tribunal was received by the office of the appellant on

> 01.03.2018 and therefore, the limitation period of 180 days for filing appeal expired on 28.08.2018.
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> 4. That, upon receipt of the impugned order, the same was put up before the competent authority for further necessary actions and after collecting the relevant documents from the internal division of the appellant's department, the impugned order was examined and finally a decision was taken by the competent authority to file an appeal against the impugned order.
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> 5. That, however, since the office of the counsel for the petitioner was under renovation inadvertently, the impugned order got misplaced. The impugned order is now found and subsequently the present appeal is being filed, but the above stated reason led to delay in filing the present appeal."

4. As is apparent from the above, the application seeking condonation of delay is bereft of any particulars. Apart from making a bald statement that the impugned order was misplaced because the office of the counsel of the appellant was under renovation and was found subsequently, no further details are provided.

5. This Court finds it difficult to accept the aforesaid explanation. It is also not possible for this Court to countenance the procedure, where the Department is clueless whether an appeal has been filed or not; and apparently, remains sanguine once instructions to file have been given to the counsel.

6. It is also relevant to note that there is a substantial delay of 109 days in re-filing the appeal as well. It is stated that after the appeal was filed, the appeal memo was returned by the Registry

with certain objections. The delay in re-filing was due to the fact that "*some of the appeal papers got misplaced which included the affidavit accompanying the appeal*". In the process of locating the appeal papers, there occurred some delay in re-filing the appeal with the Registry of this Court. The explanation for inordinate delay in re-filing reads as under: -

> "3. That, the appeal memo was returned by the registry with certain objections.
>
> 4. That, in the above process, there occurred a delay which was due to the fact that some of the appeal papers got misplaced which included the affidavit accompanying the appeal. In the process of locating the appeal papers, there occurred some delay -in re-filing the appeal with the registry of this Hon 'ble Court."

7. It is relevant to recall the observations made by the Supreme Court in ***Postmaster General v. Living Media India Ltd.: (2012) 3 SCC 563*** and the same are set out below:-

> "29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

8. Apart from the above, it is also seen that there has been an inordinate delay in the prosecuting the present appeal as well. The notice in the present appeal was issued on 18.12.2019, however, the

respondent could not be served. The hearings were adjourned thereafter on account of truncated functioning of the Court due to the outbreak of Covid-19. The present appeal was listed on 25.04.2022, however, none appeared for the appellant on that date.

9. On 10.10.2022, it was noticed that the respondent was not served and orders were passed for issuing fresh notice on steps being taken by the appellant. The matter was thereafter listed on 04.11.2022 before the concerned Registrar, however, no steps were taken by the appellant for service of the notice to the respondent. The notice served was returned back with the remark left and fresh notice was directed to be issued on the correct address of the respondent. However, a fresh notice could not be issued as the appellant did not provide the correct address. Thus, the matter, as it stands today, is that no notice has been served on the respondent.

10. As stated above, this Court finds no reason to condone the delay in filing the appeal or re-filing the same. The applications seeking condonation of such delay (CM APPL. 54192/2019 & CM APPL. 54194/2019) are rejected. Consequently, the appeal is dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

APRIL 19, 2023
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