OD-8

CEXA/4/2018
With
GA/1/2018(Old No.GA/106/2018)
GA/2/2018 (GA/107/2018)

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Central Excise)
ORIGINAL SIDE

SAPLING AGGROTECH PVT. LTD.

VERSUS

COMMISSIONER OF CENTRAL EXCISE, BOLPUR

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 24th May, 2024.

Appearance:
Mr. N. K. Chowdhury, Adv.
Mr. Arijit Chakraborty, Adv.
Mr. Nilotpal Chowdhury, Adv.
… for the appellant.

Ms. Ekta Sinha, Adv.
...for the respondent.

1. Heard Sri Chowdhury, learned counsel for the appellant and Ms. Sinha, learned advocate for the revenue.

GA/1/2018 (Old No.GA/106/2018) :

2. This appeal has been filed beyond limitation by 203 days along with an application for condonation of delay. The respondents have filed an affidavit-in-opposition dated 15.5.2024.

3. We have carefully perused the contents of paragraphs 4 to 8 of the delay condonation application (GA/106/2018) and its reply given by the respondents in the affidavit-in-opposition. We find that the cause shown for delay by the applicant/appellant that the appeal has become NPA and it is facing extreme financial crisis and, as such, could not arrange requisite funds for filing appeal, has not been specifically denied or disputed by the respondents. Therefore, we find that the cause shown for delay is sufficient and the delay in filing the appeal is condoned. Delay condonation application is allowed.

Order on Appeal :

4. Heard learned counsel for the parties and perused the impugned orders dated 16.09.2016 and 14.12.2016 in Appeal No.E/574/12 (M/s. Sapling Agrotech Pvt. Ltd. vs. Commissioner of Central Excise, Bolpur) passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata whereby the appeal has been dismissed due to non-compliance of condition of pre-deposit @ 7.5% under Section 35F of the Central Excise Act, 1944.

5. Learned counsel for the appellant states that the appellant is ready and willing to deposit the amount as directed by CESTAT and to deposit the same two months time may be granted and upon deposit of such amount, the appeal may be directed to be decided by the CESTAT on

merits. Learned counsel for the respondent does not oppose the aforesaid request.

6. In view of the aforesaid, both the impugned orders are hereby set aside subject to the condition that the appellant deposits the entire amount of Rs.10 lakhs as directed by CESTAT by the impugned order dated 16.09.2016 within two months from today. In the event the deposit is made by the appellant, within the aforesaid stipulated time, the appeal No.E/594/2012 shall stand restored before the CESTAT and the CESTAT shall decide the appeal on merits in accordance with law within next three months, after affording reasonable opportunity of hearing to the parties.

7. Subject to the aforesaid direction, both the impugned orders are hereby set aside and the appeal (CEXA/4/2018) is disposed of. It is made clear that in the event the appellant does not deposit the aforesaid amount of Rs.10 lakhs within two months from today, then there shall be no occasion for the tribunal to proceed any further in the matter. The connected application for stay (IA No.GA/2/2018) also stands disposed of.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

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