O-360

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction(Central Excise)
ORIGINAL SIDE

CEXA/46/2018
IA NO: GA/1/2018(Old No:GA/766/2018),
GA/2/2018(Old No:GA/767/2018)

COMMISSIONER OF CUSTOMS & CENTRAL EXCISE NAGPUR -I, COMMISSIONERATE RE-DESIGNATED AS COMMISSIONER OF CGST & CENTRAL EXCISE NAGPUR-I COMMISSIONERATE
VS
FABWORTH (I) LTD. (NOW KNOWN AS M/S. UNIWORTH TEXTILES LTD)AND OTHERS.

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 12th April, 2024

Appearance:
Mr. Bhaskar Prosad Banerjee, Adv.
Mr. Abhradip Maity, Adv.
...for the appellant.

1. Heard Mr. Bhaskar Prosad Banerjee, learned senior standing counsel for the applicant/appellant.
2. This appeal has been filed beyond limitation by 3731 days along with the delay condonation application being GA/766/2018 and affidavit.
3. The respondent's registered office is at Kolkata. They had their units in Raipur and Nagpur. An inter party appeal was filed before the CEGAT, Mumbai which transferred the appeal

to CEGAT, Kolkata (now known as Customs, Excise and Service Tax Appellate Tribunal) within whose jurisdiction the respondent's office is situated. In that matter, against the order of the CEGAT regarding pre-deposit, the respondent herein filed a petition before the Court in which the Central Excise Department appears to have raised the question of territorial jurisdiction on the ground that the units of the respondent herein are situated in Nagpur and Raipur. Thus, the question of territorial jurisdiction in Central Excise matter with respect to the demand of Central Excise Duty was considered by this Court by judgment dated 02.05.2002 in Uniworth Textiles Ltd. Vs. Joint Development Commissioner (reported in 2002(144) E.L.T. 515 (Cal.) and **it was held that CEGAT, Kolkata has the jurisdiction as the assessee is carrying on business from its principal place at Kolkata though it also carries on business at Nagpur and Jaipur. This question of territorial jurisdiction of the Tribunal inter parties was settled by this Court in the aforesaid case.**

4. The order in original was passed by the Commissioner of Central Excise, Nagpur confirming demand of Central Excise Duty against the Nagpur unit and Raipur unit and also imposing penalty of Rs.5 crores upon M/s. Fabworth (I) Ltd.,

Kolkata (presently known as M/s. Uniworth Textiles Ltd., Kolkata). A copy of the order in original was also sent to the respondent herein at Kolkata. Against the said order in original, the respondent herein filed Central Excise Appeal No. EDM-2032-2034/2001 before the Customs Excise and Service Tax Appellate Tribunal, Kolkata which was allowed by order dated 23.03.2007 passed by the Tribunal.

5. Although the question of territorial jurisdiction of CEGAT was settled inter parties by this Court, yet the appellant herein chosen to file appeal before the Nagpur Bench of Bombay High Court and ultimately withdrew their appeal on 22.08.2017 in view of the decision of this Court in Uniworth Textiles Ltd. (Supra). Thereafter, the appellant herein filed the present appeal in this Court on 03.04.2018 with the delay of 3731 days alongwith a delay condonation application being GA/767/2018.

6. We have perused the delay condonation application being GA/767/2018. The question of territorial jurisdiction was well settled by this Court inter parties in the year 2001-02 and accordingly the appeal was filed before the Customs, Excise and Service Tax Appellate Tribunal, Kolkata (earlier known as CEGAT, Kolkata) which has been decided by the impugned order dated 23.03.2007.

7. The fact that against the aforesaid order of CESTAT, Kolkata, appeal would lie only **to** the Calcutta High Court under Section 35G of the Central Excise Act, 1944, was well known to the appellant herein particularly when the question of territorial jurisdiction was decided inter parties. Despite this, the appellant herein deliberately chosen to file appeal before the Nagpur Bench of the Bombay High Court and subsequently they withdrew it in view of the aforesaid inter parties judgment of this Court in the case of Uniworth Textiles Ltd. (Supra).
8. Even after withdrawing the appeal on 22.08.2017, the appellant took more than seven months to file the appeal before this Court. The appellant has attempted to explain delay in filing the appeal in paragraphs 10(a) to (p) in two sets. The **first set** of explanation is with regard to delay for the period from 21.09.2007 to 22.08.2017 i.e. the period during which the appeal filed by the appellant herein remained pending before Nagpur Bench of Bombay High Court. The explanation submitted by the appellant herein for delay is wholly mis-conceived inasmuch as the question of territorial jurisdiction was settled inter parties by this Court by judgment rendered in the year 2001-02 in Uniworth Textiles (Supra) and the appellant herein was well aware of

this judgment and has even withdrawn their appeal at Nagpur Bench of Bombay High Court on the basis of the said judgment. Thus the explanation for delay for the aforesaid period from 21.09.2007 to 22.08.2017 cannot be accepted.

9. The **second set of explanation** for delay is for the period from 22.08.2017 to 03.04.2018. We find that the appellant took about more than two months to instruct the senior standing Counsel/junior standing Counsel at Kolkata High Court for filing appeal. No reason for such delay has been disclosed particularly when the appeal itself was ready. The appellant had already prepared the appeal long back in the year 2007. The story developed in sub paragraphs (h) to (j) of paragraph 10 of the delay condonation application (GA/766/2018) is not supported by any evidence. That apart, when appeal itself was ready in the year 2007, the question of finalisation of draft so as to file the appeal, appears to be merely cooked up story to defeat the of limitation. The explanations given in subsequent sub paragraphs also do not appear to be sufficient explanations.

10. Thus the appellants have completely failed to explain long delay of 3731 days. Under the circumstances, the delay cannot be condoned and the delay condonation application deserves to be rejected.

11. For all the reasons aforestated, the delay condonation application being GA/766/2018 in CEXA/46/2018 is hereby rejected. Consequently, the appeal CEXA/46/2018 and pending applications, if any, also stand dismissed.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

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