od-13

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

CUSTA/84/2024
M/S EURO OVERSEAS
VS
COMMISSIONER OF CUSTOMS (PORT) KOL

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE BIVAS PATTANAYAK
DATE : October 04, 2024.

Appearance :
Mr. S.K. Mahapatra, Adv.
Ms. Sudipta Ghosh, Adv.
Mr. Bikash Kumar Roy, Adv.
…for appellant
Mr. Koushik Dey, Adv.
Mr. Bijitesh Mukherjee, Adv.
…for respondent

The Court :- It appears that there is a delay of eighty-three days in filing the appeal. As we are satisfied with the explanation offered, the delay is condoned.

This appeal has been filed by the assessee challenging the order passed by the Customs, Excise, Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (the Tribunal) in final order No. 75509/2024 dated 13th March, 2024. The appellant assessee has raised the following substantial questions of law for consideration:-

(i) Whether the Ld. Tribunal has committed a gross error of law in dismissing the appeal instead of taking of the appeal on merit on condonation of delay?

(ii) Whether the Ld. Tribunal has erred in appreciating that the non-action on the part of the petitioner is nothing but an outcome of lack of proper legal advice?

(iii) Whether the order passed by the Ld. Tribunal is perverse, bad in law and ex-facie unsustainable and hence liable to be set aside ?

We have heard learned Advocates on either side.

The order impugned in this appeal was passed by the Tribunal dismissing the appeal filed by the appellant challenging the order passed by the Commissioner of Customs (Appeals), Kolkata dated 20th September, 2017, on the ground that the appeal is time barred. In fact, the appeal filed by the appellant before Commissioner of Customs (Appeals) against the Order-in-Original dated 13th November, 2016 also made to the same fate as it was filed after an expiry of 173 days. In terms of Section 128 of the Customs Act, the maximum time period for filing an appeal is sixty days with a condonable period of thirty days. Therefore, beyond ninety days the Commissioner of Customs (Appeals) cannot entertain an appeal. Therefore, the order passed by the Commissioner of Customs (Appeals) cannot be faulted nor order passed by the learned Tribunal. However, we take note of the facts and circumstances of the case and also the revenue involved, the appellant was refunded the special additional duty based upon the documents submitted one of which was the Chartered Accountant's certificate. The department after issuing the refund issued a show cause notice under Section 28(4) of the Act on the ground that refund has been erroneously made as the Chartered Accountant's Certificate is not a valid certificate since on the date of issuance of certificate by Chartered Accountant the Chartered Accountant was no more. The learned Advocate for appellant submitted that bunch of certificates issued by the Chartered Accountant Firm and despite one of its partners having passed away the Firm continued to use the same letterhead and there were other similar cases where the assessee were permitted to produce fresh Chartered Accountant's certificate which was examined and accepted by the department. Therefore, it is submitted that it not a case of fraud or forgery but appears to be a mistake committed by the Chartered Accountant Firm and the assessee should be granted an opportunity by the adjudicating authority to produce a fresh Chartered Accountant Certificate so as to enable them to establish the genuinity of the claim for refund. Furthermore, we find that what was refunded to the appellant was Rs.4,81,212/- and the amount is not a substantial amount.

Therefore, we are of the view that the case on hand is a peculiar case which would call for appropriate remedy. For the above reasons, the appeal is allowed and the order passed by the learned Tribunal, Commissioner of Customs (Appeals) and the order passed by the adjudicating authority dated 3rd November, 2016 are set aside and the matter is remanded back to the adjudicating authority namely the Refund Section of the Customs House and the appellant is directed to produce a fresh Chartered Accountant's Certificate which shall be examined, verified and a fresh order be passed by the adjudicating authority in accordance with law.

The appeal is allowed on the above grounds and consequently, the substantial questions of law are left open.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(BIVAS PATTANAYAK, J.)

pkd/GH