IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102 ***2024:PHHC:003801-DB***

CEA-20-2022 (O & M)
Date of Decision: 12.01.2024

Commissioner, Central Excise Commissionerate, Sonepat (Delhi-III)

.....Petitioner(s)

Versus

M/s. Ultratech Cement Ltd. ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Anshuman Chopra, Sr. Standing Counsel,
Mr. Deepesh Kakkar, Advocate,
and Mr. Pankaj Kumar, Advocate,
for the appellant.

Mr. Amrinder Singh, Advocate,
for the respondent.

G.S.SANDHAWALIA, J. (Oral)

1. The challenge in the present appeal filed by the Revenue, which is barred by 1754 days in re-filing, is to the final order dated 01.12.2014 (Annexure P-3) passed by the Custom, Excise & Service Tax Appellate Tribunal, New Delhi arising out of the order No.100/CE/COMMR/DM/RTK/2013-14 dated 31.03.2014 passed by the Commissioner.

2. The Tribunal came to the conclusion that the entire demand was barred by limitation and had allowed the appeal keeping in view the fact that the demand was for the period 2009 and the show cause notice was only issued on 09.11.2012 (Annexure P-4) proposing denial of cenvat credit. It was noticed that identical issues stood decided by the Tribunal in number of decisions and, therefore, since the law was declared subsequently, no *malafide* can be attributed to the appellant for the purposes of alleging suppression and for invoking the longer period of limitation. On merits, it

was noticed that a larger Bench of the Tribunal in the case of ***Vandana Global Ltd. vs. Commissioner of Cenral Excise, Raipur, 2010 (253) 440*** had held that no cenvat credit would be available in respect of various iron and steel items which had been used for supporting the structures.

3. It has been brought to our notice that the decision of the larger Bench of the Tribunal stands reversed by the Division Bench of the Chattisgarh High Court in ***Vandana Global Ltd. vs. Commissioner of Central Excise, Raipur, 2018 (16) GSTL, 462*** while placing reliance upon the judgment of the Gujarat High Court in ***Mundra Ports & Special Economic Zone Ltd., vs. Commissioner, 2015 (39) STR 726 (Guj.)*** and also in ***Thiru Arooran Sugars vs. CESTAT, Chennai, 2017 (355) ELT 373 (Mad.).*** The view taken as such was that the amendment could only operate prospectively which was made in the Cenvat Credit Rules, 2004 which came into force from 07.07.2009 and in such circumstances the benefit had been granted regarding the issue of the structures which are embedded to the earth and whether the structures were to be treated as inputs used in final products as input for capital goods. Out of the said judgment of the Chattisgarh High Court, ***SLP (Civil) Diary No.20723/2018, Commissioner, Customs and Service Tax (CGST) vs. M/s. Shri Nakoda Ispat Ltd. through its Authorised Person*** was preferred, which was dismissed on 12.07.2018.

4. Resultantly, we are of the considered view that even on merits as such, the issue has been settled in favour of the assessee and, therefore, we do not feel that in the present case, the issue of limitation and whether there is any suppression as such needs to be gone into, as argued by counsel for the Revenue since on merits the issue stands decided against it.

5. Even otherwise, we are of the considered opinion that the appeal is also patently time barred and there is no ground to condone the delay in refiling since initially it was filed by a separate counsel way back on 27.06.2015 and had been returned with objections on 10.07.2015. The appeal was re-filed on 18.02.2016 by the earlier counsel and had been returned on 28.03.2016 and re-filed on 11.04.2016. The same was returned on 04.06.2016 to the said counsel which had been re-filed on 09.06.2016 and had been returned on 08.08.2016. In the application for condonation of delay, it has been mentioned that the earlier counsel did not return the original set of documents by saying that the original file has been misplaced and is not traceable and he is no longer on the panel. However, the fact remains that after the returning of the appeal in August, 2016, the present appeal was filed by preparing a fresh paper book only on 23.05.2022 and there is nothing to show in the application as to what transpired from August, 2016 to 23.05.2022 and, thus, the inordinate delay as such which has occurred in re-filing thereafter also cannot be justified in any manner. Even if the benefit of Covid-19 is to be granted, however, there no explanation has come forth for the non-filing for a period of 4 years from August, 2016 till March, 2020. In ***B.M. Singh vs. State of Haryana and others, 2013 (27) RCR (Civil) 194,*** it has been held by a co-ordinate Bench that the re-filing period is 40 days as per the High Court Rules and Orders and unreasonable period cannot be taken to remove the defects in filing. The relevant portion reads as under:-

> *"18. We may hasten to add that there is no straight jacket formula for condonation of delay in re-filing as it depends upon the facts and circumstances of each case but it must be understood that a litigant, who*

has succeeded before the Competent Court, expects notice of the Higher Court up to a particular period of time and thereafter, he becomes supremely confident that no such case has been filed against him and the judgment in his favour has become final, but he is taken aback when he receives a notice from the Court after a long period when the case is re filed and the delay in re-filing thereof is condoned. As a matter of fact, the litigant before the Court has a right to sit back and relax after the expiry of prescribed period of time that no case is filed against him by his opponent but these days, there is a growing tendency to file incomplete cases and then take unreasonably long time to remove the defects, even where such defects can be cured within a very short time. For example, in the present case, once the Registry had raised the objection that there is a delay of 45 days in filing of the appeal, the applicant should have filed the application for condonation of delay or should have at least explained it while removing the objection that how the application is within limitation. As a matter of fact, the applicant simply removed the objection of delay by writing one line that it is within limitation. Secondly, the explanation given in the application for condonation of delay in its paras 4 and 5 runs contrary to each other because in para 4 of the application, it is mentioned that the paper book of the Review Application was mixed up with the pending cases, whereas in para 5 of the application, it is alleged that it has been traced out from one of the decided cases. It is not clear whether according to the averment made in para 4, the paper book of the Review Application was placed in the pending cases or according to the averment made in para 5 of the application, it was placed in the decided cases and the said decided case was mixed up with the pending cases.

6. In the absence of any sufficient cause having been shown, we are of the considered opinion that even on the issue of limitation, the delay is not liable to be condoned.

7. Accordingly, we dismiss the appeal in view of the above observations.

(G.S. SANDHAWALIA)
JUDGE

12.01.2024
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking Yes
Whether reportable No