

OD - 5

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Central Excise]

ORIGINAL SIDE

CEXA/6/2011
WEBSOL ENERGY SYSTEMS LTD.
VS
COMMISSIONER OF CENT. EXCISE, KOL -III, COMMISSIONERATE & ORS

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 6th August, 2025

Appearance :
Mr. Uday Shankr Bhattacharya, Adv. (VC)
Ms. Aishwarya Rajyashree, Adv. (VC)
Ms. Banani Bhattacharya, Adv.
...for the respondent.

The Court : This appeal filed by the appellant under section 35G of the Central Excise Act, 1944 is directed against the order dated 29.4.2008 passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Regional Bench, Kolkata (Tribunal) in Miscellaneous Application No.289/2007, Stay Petition No.417/2007 and Excise Appeal No.430/2007.

The appeal was admitted on 10.8.2011 on the following substantial questions of law :

"1) Whether the learned Tribunal below committed substantial error of law in dismissing the application for condonation of 180 days delay by demanding a higher standard of proof than one required for being successful in such an application.

2) Whether the learned Tribunal below committed substantial error of law by overlooking the fact that the Revenue did not dispute the averment made the application for condonation of delay by filing any affidavit-in-opposition in spite of giving opportunity and, thus, on the basis of uncontroverted averment made in the application, it was a fit case for allowing the application."

None appears for the appellant. We have heard Mr. Uday Shankar Bhattacharya, learned senior standing counsel appearing for the respondent assisted by Ms. Aishwarya Rajyashree, learned advocate.

The appellant/assessee filed the appeal before the Tribunal challenging the Order-in-Appeal No.65/Kol-III/2006 dated 31.8.2006 passed by the Commissioner (Appeal - I), Central Excise, Kolkata. The said appeal was filed by the appellant/assessee challenging the Order-in-Original No.2/Demand/05 dated 25.7.2005 passed by the Assistant Commissioner, Central Excise, Dumdum - 2 Division, Kolkata - III Commissionerate confirming the demand of Rs.3,27,507/- under section 11A of the Act, imposing an equivalent amount of penalty in terms of the provisions of section 11AC and charging interest at appropriate rate under section 11AB. The appellate authority by order dated 31.8.2006 dismissed the appeal.

Aggrieved by such order, the assessee filed an appeal before the learned Tribunal. The appeal before the learned Tribunal was not filed within the period of limitation but there was a delay of 180 days in filing the appeal. An explanation was offered by the assessee stating that the order passed by the appellate authority was received by a dealing assistant who did not bring it to the notice of the management and the dealing assistant left the organisation in December 2006 and the person who

was subsequently appointed had traced out the order and the appeal was filed. The Department did not file any affidavit in opposition before the learned Tribunal objecting to the reasons given by the assessee for not able to prefer the appeal within the period of limitation. However, before the learned Tribunal the Department representative opposed the prayer for condonation of delay and stated that the reasons given are baseless and if it is accepted by the learned Tribunal, it will cause irreparable injury to the revenue.

At this juncture, we can take judicial notice of the fact that seldom the Department files their appeal within the period of limitation before this Court and many a times this Court has exercised discretion and condoned the delay as this Court while considering the appeal was required to consider as to whether any question of law arises for consideration. That apart, the delay of 180 days cannot be stated to be inordinate nor the appellant/assessee can be stated to have been not diligent in prosecuting the matter. The appellant had contested the show cause notice issued by the Assistant Commissioner, Central Excise and submitted written submissions before the adjudicating authority and personal hearing which was granted on 18.8.2004 cannot be stated to have been not diligent to put forth their submissions before the adjudicating authority. The adjudicating authority having held against the appellant/assessee by passing Order-in-Original dated 25.7.2005, the appellant immediately preferred appeal before the Commissioner (Appeals) contesting the adjudication order on merits. However, the appeal was dismissed by the appellate authority. Against which, the assessee preferred appeal before the Tribunal. The learned Tribunal being the last fact

finding authority in the hierarchy of authorities as provided under the provisions of the Central Excise Act, 1944, the remedy before the learned Tribunal is not only an efficacious remedy but an effective remedy. This is more so because if the assessee is aggrieved by the order passed by the Tribunal and prefers an appeal before this Court under section 35G of the Act, the Court can consider the appeal only if a substantial question of law arises for consideration. Therefore, we are of the view that the appellant should be granted an opportunity to contest the matter on merits so as to enable the learned Tribunal to take a decision on merits after considering the submissions of the appellant/assessee.

For the above reasons, the appeal is allowed. The impugned order passed by the learned Tribunal is set aside and the delay in filing the appeal is condoned and the appeal is directed to be restored to the file of the learned Tribunal to be heard and decided on merits in accordance with law.

Upon the appeal being restored, the Registry of the learned Tribunal shall serve notice on the appellant/assessee as well as the Department and thereafter proceed to fix a date for hearing of the matter. Consequently, the substantial questions of law are left open.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

