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Boban Mani vs the Commissioner of Central Excise

Boban Mani vs the Commissioner of Central Excise

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Court : Kerala

Decided On : Jul-04-2019

Judge : Honourable Mr.Justice C.K.Abdul Rehim,Honourable Mr. Justice R. Narayana Pisharadi

Appeal No. : C.E.Appeal/12/2019

Appellant : Boban Mani

Respondent : The Commissioner of Central Excise

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM & THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI THURSDAY, THE 04TH DAY OF JULY 2019 / 13TH ASHADHA, 1941 C.E.Appeal.No.9 of 2019 AGAINST THE ORDER DATED 16.07.2018 IN ST NO.21530/2017 of CUSTOMS,EXCISE&SERVICE TAX APP.TRIBUNAL,BANGALORE

APPELLANT/APPELLANT: BOBAN MANI, AGED 52 YEARS, S/O.LATE MANI, ERUPOOLUMKATTIL, MANNATHOOR P.O., PAMPAKUDA, ERNAKULAM, KERALA- 686723. BY ADVS.SRI.P.G.JAYASHANKAR

SHEBA RIVY SIMON SMT.LINTA VARGHESE SMT.T.S.LIKHITHA RESPONDENT/RESPONDENT: THE COMMISSIONER OF CENTRAL EXCISE, COCHIN COMMISSIONERATE, C.R.BUILDING, I.S. PRESS ROAD, COCHIN- 682018. BY ADV. SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF EXCISE AND CUSTOMS THIS CENTRAL EXICISE APPEAL HAVING COME UP FOR ADMISSION ON 04.07.2019, ALONG WITH C.E.Appeal.11/2019, C.E.Appeal.12/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM & THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI THURSDAY, THE 04TH DAY OF JULY 2019 / 13TH ASHADHA, 1941 C.E.Appeal.No.11 of 2019 AGAINST THE ORDER DATED 16.07.2018 IN ST NO.21525/2017 of CUSTOMS,EXCISE&SERVICE TAX APP.TRIBUNAL,BANGALORE

APPELLANT/APPELLANT: BOBAN MANI, AGED 52 YEARS, S/O.LATE MANI,ERUPOOLUMKATTIL, MANNATHOOR.P.O,PAMPAKUDA, ERNAKULAM,KERALA-686723. BY ADVS.SRI.P.G.JAYASHANKAR SHEBA RIVY SIMON SMT.LINTA VARGHESE SMT.T.S.LIKHITHA RESPONDENT/RESPONDENT: COMMISSIONER OF CENTRAL EXCISE,CUSTOMS AND SERVICE TAX COCHIN COMMISSIONERATE, C.R. BUILDING, I.S. PRESS ROAD,COCHIN-682018. BY ADV. SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF EXCISE AND CUSTOMS THIS CENTRAL EXICISE APPEAL HAVING COME UP FOR ADMISSION ON 04.07.2019, ALONG WITH C.E.Appeal.12/2019, C.E.Appeal.9/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:3:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM & THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI THURSDAY, THE 04TH DAY OF JULY 2019 / 13TH ASHADHA, 1941 C.E.Appeal.No.12 of 2019 AGAINST THE ORDER DATED 16-07-2018 IN ST 20275/2018 of CUSTOMS,EXCISE&SERVICE TAX APP.TRIBUNAL,BANGALORE

APPELLANT/APPELLANT: BOBAN MANI, AGED 52 YEARS, S/O. LATE MANI, ERUPOOLUMKATTIL, MANNATHOOR P.O., PAMPAKUDA, ERNAKULAM, KERALA - 686 723 BY ADVS.SRI.P.G.JAYASHANKAR SHEBA RIVY SIMON SMT.LINTA VARGHESE SMT.T.S.LIKHITHA RESPONDENT/RESPONDENT: THE COMMISSIONER OF CENTRAL EXCISE COCHIN COMMISSIONERATE, C.R. BUILDING, I.S. PRESS ROAD, COCHIN - 682 018 BY ADV. SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF EXCISE AND CUSTOMS THIS CENTRAL EXICISE APPEAL HAVING COME UP FOR ADMISSION ON 04.07.2019, ALONG WITH C.E.Appeal.11/2019, C.E.Appeal.9/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:4:- C.K.ABDUL REHIM & R.NARAYANA PISHARADI,JJ. ========== C.E.A. Nos.9, 11 & 12 of 2019 ----- ---------- ---- Dated this the 4th day of July,2019

JUDGMENT

C.K.ABDUL REHIM, J.

Challenge in all these appeals against a common order

of the Customs, Central Excise & Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, in ST Nos.21525, 21527 and 21530 of 2017. The appellant herein was the appellant before the Tribunal, who challenged the orders passed by the Commissioner of Central Excise(Appeals), Cochin, confirming the assessments made against him.

2. The Tribunal had dismissed the appeals through

the common order impugned herein, consequent to the dismissal of the applications filed by the appellant seeking condonation of delay occurred in filing the appeals, as ST/COD/Nos.20279, 20275 and 20281 of 2018. The appeals -:5:- were filed along with the applications seeking condonation of delay, accompanied by affidavits of the appellant. In the affidavit filed in support of the applications it was mentioned that, the orders of the original authority, which were passed in December, 2014, were not served on the appellant, till 10.08.2017. According to him, he joined a 'preaching service mission' and was associated with their activities at Punjab and Hyderabad, since July,2013. He was not available in Kerala since then. It is stated that, he has transferred the business activities to his brother-in-law, who

was looking after the affairs since December,2013. According to the appellant, when he was out of station, only his father was residing in the address furnished to the authorities and that the father passed away on 29.05.2015. It is stated that, the father has not informed the appellant about receipt of any orders from the Assessing Authority. It is also stated that the appellant got information about the impugned orders only in August,2017. Thereafter he had taken steps to obtain certified copies and to prefer the

appeals. According to him, he had preferred the appeals within the time stipulated, if computed from the date of his -:6:- knowledge about the impugned orders. However, he has filed the applications seeking condonation of delay, only as a formal application required, without even computing the extent of the delay occurred.

3. The Tribunal, while considering the applications, found that the impugned orders were passed on 11.12.2014 and the appeals were filed only on 25.10.2017, after a period

of more than 2 years. The Tribunal found that the appellant was grossly negligent in pursuing the cause, despite the fact that he was aware about pendency of the appeals before the first Appellate Authority as well as with respect to the writ

petition pending before this court on the subject matter. The Tribunal further found that, a certificate produced by the appellant, which is issued by the 'preaching service missionary', does not indicate that the appellant was not at all visiting Kerala during the last more than four years. Considering the admissions made by the appellant that his brother-in-law was running the business and that his father was residing in the residential address till 29.10.2015, it was found that the inordinate delay occurred in filing the

appeal was not properly explained by the appellant. -:7:- Therefore the delay condonation applications were dismissed and consequently the appeals were also dismissed.

4. Learned counsel for the appellant contended that,

the Tribunal ought to have adopted a lenient view in the matter of condoning the delay, taking into consideration of the circumstances enumerated by the appellant in the

affidavits filed in support of the applications. It was also contended that, even in the case where the Tribunal was not fully convinced about acceptance of the reasons mentioned for causing of the delay, the Tribunal ought to have taken a lenient view, based on the legal position remaining settled by this Court and the Hon'ble Supreme Court, in the matter of condonation of delay in filing appeals. It is pointed out that, it remains well settled that all the courts and quasi-judicial authorities shall take care to see that the causes are decided on merits, rather than dismissing them on technicalities. It is also pointed out that, the Tribunal had omitted to take into consideration whether the delay could have been condoned in terms of ordering of cost, for compensating the prejudices which may be caused to the respondent.

-:8:-

5. On the other hand, learned Standing Counsel

appearing for the respondent had pointed out that, there occurred gross negligence and latches on the part of the appellant and despite that he has not

filed any proper affidavits before the Tribunal.

6. Considering the rival contentions, we are of the

opinion that there exists a question of law as to whether the Tribunal had failed in considering the question as to whether the delay could have been condoned in terms of awarding cost.

7. As discussed above, we have to concur with the

findings arrived by the Tribunal that the appellant had failed to offer any proper explanation with respect to the delay caused, which is convincing to the Appellate Tribunal. But at the same time, the Tribunal had failed to consider whether a lenient view could have been taken based on the settled legal principles. While considering whether there exists any 'sufficient cause' for condoning the delay, the Tribunal also could have considered about allowing the petitions on taking a liberal attitude, in terms of cost, in order to compensate the prejudices which may be caused to the opposite side.

-:9:-

8. Taking the overall circumstances, we are of the view that, it is only just and proper to permit the appellant to pursue the appeals on merits after condoning the delay occurred. However, we take note of the fact that the

prejudices which may be caused to the respondent Department need to be compensated in terms of cost. On a reasonable estimation, we think it appropriate to impose cost of `7,500/- each in the above cases, for condoning the delay.

9. Hence, the above appeals are hereby allowed. The impugned orders passed by the Tribunal in each of the cases

are hereby set aside. The delay condonation applications filed before the Tribunal as ST/COD/Nos.20279, 20275 and 20281 of 2018 will stand allowed, subject to condition of the appellant making payment (remittance) of cost of `7,500/- each to the respondent, within a period of two weeks from today. The cases are remitted to the Tribunal on the basis of the above directions. The Tribunal, on noticing

payment of the cost as ordered above, shall restore the appeals on its files and shall dispose of the same on merits, after affording -:10:- opportunity of hearing to both sides, at the earliest. Needless to observe that, on failure of the appellant to make payment of the cost ordered, the orders impugned herein will survive and continue to be in force. Sd/- C.K.ABDUL REHIM JUDGE Sd/- R. NARAYANA PISHARADI JUDGE DST -:11:- APPENDIX OF C.E.Appeal 9/2019 PETITIONER'S/S EXHIBITS: ANNEXURE A TRUE COPY OF SHOW CAUSE NOTICE NO.22/2011/ST DATED 07.10.2011 ISSUED BY THE OFFICE OF THE DEPUTY COMMISSIONER OF CENTRAL EXCISE, MUVATTUPUZHA DIVISION.

ANNEXURE B TRUE COPY OF REPLY DATED 30.07.2012. ANNEXURE C TRUE COPY OF THE ORDER IN ORDER-IN-ORIGINAL NO.09/2012/ST DATED 27.08.2012 OF THE DEPUTY COMMISSIONER OF CENTRAL EXCISE, MUVATTUPUZHA. ANNEXURE D TRUE COPY OF THE CERTIFICATE NO.FIN/T&I/5698/07 DATED 23.03.2011 ISSUED BY M/S.CSL. ANNEXURE E TRUE COPY OF ORDER-IN-APPEAL DATED 11.12.2014 ISSUED BY THE COMMISSIONER CENTRAL EXCISE (APPEALS). ANNEXURE F TRUE COPY OF THE MEMORANDUM OF APPEAL FILED BEFORE THE HON'BLE CESTAT. ANNEXURE G TRUE COPY OF THE DEFECT MEMO DATED 29.11.2017 ISSUED BY THE REGISTRY OF THE HON'BLE CESTAT. ANNEXURE H TRUE COPY OF THE APPLICATION FOR CONDONATION OF DELAY FILED BY THE APPELLANT. ANNEXURE I TRUE COPY OF THE ORDER NO.21034/2018 DATED 16.07.2018 ISSUED BY THE CESTAT. -:12:- APPENDIX OF C.E.Appeal 11/2019 PETITIONER'S/S EXHIBITS: ANNEXURE A TRUE COPY OF SHOW CAUSE NOTICE

N0.06/2010/ST DATED 25.02.2019 ISSUED BY THE DEPUTY COMMISSIONER OF CENTRAL EXCISE,CUSTOMS AND SERVICE TAX,MUVATTUPUZHA DIVISION.

ANNEXURE B TRUE COPY OF REPLY DATED 09.08.2010. ANNEXURE C TRUE COPY OF THE ORDER IN ORIGINAL NO.27/2010/ST DATED 23.09.2010 ISSUED BY THE DEPUTY COMMISSIONER OF CENTRAL EXCISE,MUVATTUPUZHA. ANNEXURE D TRUE COPY OF THE CERTIFICATE

NO.FIN/T&L/5698/07 DATED 14.5.2010 ISSUED BY CSL. ANNEXURE E TRUE COPY ORDER-IN-APPEAL NO.FIN/T&I/5698/07 DATED 14.05.20109 ISSUED BY COMMISSIONER OF CENTRAL EXCISE(APPEALS). ANNEXURE G TRUE COPY OF THE DEFECT MEMO DATED 29.11.2017 ISSUED BY THE REGISTRY OF THE HON'BLE CESTAT. ANNEXURE H TREU COPY OF THE APPLICATION FOR CONDONATOIN OF DELAY FILED BY THE APPELLANT. ANNEXURE I TRUE COPY OF THE ORDER NO.21032/2018 DATED 16.07.2018 ISSUED BY THE HON'BLE CESTAT. -:13:- APPENDIX OF C.E.Appeal 12/2019 PETITIONER'S/S EXHIBITS: ANNEXURE A TRUE COPY OF SHOW CAUSE NOTICE

NO.12/2011/ST DATED 22.07.2011 ISSUED BY OFFICE OF THE DEPUTY COMMISSIONER OF CENTRAL EXCISE MUVATTUPUZHA

ANNEXURE B TRUE COPY OF REPLY DATED 30.07.2012 ANNEXURE C TRUE COPY OF THE ORDER IN ORDER-IN-ORIGINAL NO.08/2012/ST DATED 27.08.2012 OF THE DEPUTY COMMISSIONER OF CENTRAL EXCISE, MUVATTUPUZHA ANNEXURE D TRUE COPY OF THE CERTIFICATE NO. FIN/T&I/5698/07 DATED 2303.2011 ISSUED BY M/S. CSL ANNEXURE E TRUE COPY OF THE ORDER-IN-APPEAL DATED 11.12.2014 ISSUED BY THE COMMISSIONER OF CENTRAL EXCISE (APPEALS) ANNEXURE F TRUE COPY OF THE MEMORANDUM OF APPEAL FILED BEFORE THE ECSTAT ANNEXURE G TRUE COPY OF THE DEFECT MEMO DATED 29.11.2017 ISSUED BY THE REGISTRY OF THE HON'BLE CESTAT ANNEXURE H TRUE COPY OF THE APPLICATION FOR CONDONATION OF DELAY FILED BY THE APPELLANT ANNEXURE I TRUE COPY OF THE ORDER NO.21033/2018 DATED 16.07.2018 ISSUED BY THE HON'BLE CESTAT

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