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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Sep-24-2004

Reported in : (2004)(117)LC583Tri(Chennai)

Judge : R K Jeet

Appellant : Lakshmi Bleachers

Respondent : Cce

Judgement :

1. This is an application for condonation of delay of 23 months and 4 days in filing the appeal on the ground that the impugned order was received on 10.1.2002.
2. Appearing on behalf of the applicants Id. Consultant Shri R.Balagopal submits that when the impugned Order-in-Appeal was received on 10.1.2002, they handed over all the connected papers to one Shri K.Narayanan, Advocate at Trichy with a request to do the needful for filing the appeal. He further submits since the appellants had also already executed vakalat in his favour they were under the bona fide faith and belief that the Advocate K. Narayanan would do not needful in the matter. He further submits that with great difficulty they located the family of the Advocate and asked for the copy of the appeal papers and connected documents. The advocate's wife was also very sickly women and it took some time for her to locate the paper and they were able to get back their file. On receipt and perusal of the file, it was noticed by them that the appeal was not filed. Id. Consultant further submits that somebody in the trade took them to the present

consultant to file the appeal. In the process there was a delay of 23 months and 4 days in filing the appeal. Ld. Consultant has also filed an affidavit from the appellant in support of the condonation application and the death certificate from the Tiruchirappalli City Corporation, Trichy in respect of Shri K. Narayanan, Advocate. From the death certificate it could be seen that the said advocate Shri K. Narayanan died on 28.10.2003. Ld. Consultant pressed into service the judgment rendered by the Hon'ble High Court of Calcutta in the matter of Bengal Rolling Mills Ltd. v. CEGAT wherein the Hon'ble High Court has held that laches and negligence on the part of the Advocate or authorised agent is a sufficient ground and reason for condonation of delay. He also submit that in the Writ Petition before the Hon'ble High Court of Calcutta the facts enunciated by them are similar and the delay should be condoned.

3. Appearing on behalf of the Revenue Id. SDR, smt. Bhagya Devi opposed the petition for condonation of delay on the ground that there is an abnormal delay of 23 months 4 days. She submits that the appeal was required to be filed on or before 10.4.2002 when the Id. Counsel Shri K. Narayanan was very much alive. He died only on 28.10.2003. That is to say after a period of one and half years and he could have filed the appeal during this period which he did not do and the applicants had also sufficient time to check from the advocate whether the appeal has been filed or not. In this connection Id. SDR also distinguished the facts stated in the judgment rendered by the Hon'ble High Court of Calcutta in the matter of Bengal Rolling Mills Ltd. (supra) wherein the delay was about 7 months only. Moreover, the appellants have not produced any proof that the appeal papers and connected documents were handed over to the advocate Shri K. Narayanan. She also put into service the decision rendered by the North Regional Bench, Delhi in the matter of Indian Creation Exports v. CC (ICD) TKD New Delhi wherein the Bench rejected the application for condonation of delay of 322 days and observed that no reason has been brought forward to show that they had checked up with the consultant whether the appeal has been filed within the time limit specified in the Act. When the Act specifically provides three months for filing the appeal, the said period has to be adhered to. It has also been observed by the Tribunal that if the condonation of delay application on this ground is accepted, every applicant in the case of delay can put the blame on to his Consultant/Advocate. It was in this

background the Tribunal held no sufficient reasons have been advanced by the applicants to justify the delay in filing the appeal. Id. SDR submits that there is abnormal delay of almost 694 days (23 months and 4 days).

She vehemently argued that there is no justification for condoning the delay and the same should be rejected.

4. In his rejoinder Id. Consultant submits that mother of all decisions on condonation of delay is the Apex Court judgment rendered in the case of Collector, Land Acquisition Anantanag and Anr. v. Mst. Katiji and Ors. and he invited my attention to para (v) wherein it has been held that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. He also relied on para (vi) wherein it has been held that it must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and as expected to do so. He further submitted that there is a case for condonation of delay and they have not gained anything by deliberate delay and in view of he para (v) and (vi) of the Supreme Court case enunciated by the Apex Court the delay is required to be condoned.

Against this argument Id. SDR submitted that in that case the delay was only for one day and there was no abnormal delay in that matter. She pressed into service the judgment rendered by the Apex Court in the matter Of National Fertilisers Ltd. v. CCE wherein the delay of 434 days in filing the appeal was not condoned. Whereas in the instant case the delay is more than 694 days which is very abnormal and does not call for condonation of such abnormal delay.

5. I have gone through the case records and after hearing both the sides/am of the considered opinion that the delay in filing the appeal in the present case is 694 days which is very abnormal. The impugned order was received by the appellants on 10.1.2002 and the appeal should have been filed on or before 10.4.2002. Excepting the ipse dixit, no evidence whatsoever has been produced to support the contention of the applicants that they have handed over the papers to their Advocate Shri K. Narayanan, for filing the appeal. The appellant has submitted an

affidavit and all that is stated therein is that the contents of the appeal, stay petition and COD application are correct. The advocate to whom the papers were stated to have been entrusted died only on 28.10.2003. There is no averment as to when the papers were handed over to their Advocate and what effort has been made by them to contact the advocate after 10.4.2002 and up to 27.10.2003 when the time had already run out for filing the appeal. Even, if a sympathetic view is taken to the submissions of the appellants that since the advocate to whom the papers had been entrusted died and the appeal could not be filed in time, there is total absence of any explanation as to what had happened between 10.4.2002, and 28.10.2003 i.e. that is last date of filing of the appeal and date of death of the Advocate. I note that the Hon'ble Supreme Court in the case of UOI v. Tata Yudogawa Limited reported in 1988 (38) ELT 739 (SC) : 1988 (19) ECR 569 (SC) has dismissed a condonation of delay application filed by the department even when the department has explained with supporting evidence that the delay of 51 days in filing the appeal was because of interdepartmental correspondence. In the present case, as noted above, there was hardly any effort made by the appellants to contact advocate even after the time for filing the appeal had run out. There was, therefore complete negligence on the part of the appellants and the undue delay of 694 remains un-explained. The law helps the diligent and not the negligent.

I, therefore reject the condonation of delay application. Consequently, the Stay petition and the appeal also stand rejected. Ordered accordingly.

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