SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Shore to Shore Mis :pvt. Ltd. Vs. Cce

Shore to Shore Mis :pvt. Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/42375

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

Decided On : Apr-06-2006

Reported in : (2006)(109)ECC189

Judge : P Chacko, K T P.

Appellant : Shore to Shore Mis :pvt. Ltd.

Respondent : Cce

Judgement :

1. There are two applications before us, one praying for condonation of delay of 78 days involved in the filing of the appeal and the other seeking waiver of predeposit and stay of recovery in respect of Service tax and penalty amounts. We take up the first application.

2. The impugned order was received by the appellants on 15.5.05 and the appeal was filed on 3.11.05 with a delay of 78 days. One Shri P.Karthikeyan, Director (Operations) of the Company has offered explanation of this delay in his affidavit. According to his explanation, when the impugned order was received, one Shri R. Prasanna was incharge of the tax matters, but, for want of executive skills, he was sent out of job in June 2005. One Shri Ananthanarayanan was appointed in his place in the same month. But he also could not take steps for filing of appeal for want of records. Shri Ananthanarayanan in his affidavit says that he was not informed by Shri Prasanna about receipt of the impugned order. He proceeds to say that he contacted Shri Prasanna over telephone and then only he was told

about receipt of the impugned order. Both the affidavits say that the Director (Operations) was on worldwide tour during the material period. Learned Counsel submits that the delay of the appeal stands satisfactorily explained by the deponents in the respective affidavits. It is also claimed that the appellants have strong prima facie case on merits and therefore, if the delay of appeal is not condoned, they will be put to gross injustice. Learned SDR submits that convincing reason has not been stated by the appellants for condonation of the delay of appeal.

Relying on the Hon'ble Supreme Court's judgment in Union of India v.Tata Yodogawa Ltd. reported in 1988 (38) ELT 739 (SC), she submits that the delay of the appeal having not been explained on a day-to-day basis, is not liable to be condoned. In his rejoinder, the learned Counsel relies on the Hon'ble Supreme Court's judgment in the case of Collector, Land Acquisition Anantnag and Anr. v. MST. Katiji and Ors.

and pragmatic and justice-oriented manner, the delay requires to be condoned.

3. We have given careful consideration to the rival submissions. In his affidavit, the Director (Operations) has acknowledged the fact that he was in control of the functions of Shri Prasanna and Shri Ananthanarayanan during their respective periods of tenure in the Company. It is said that Prasanna left the job in June 2005 after having received a copy of the impugned order on 15.5.2005. Shri Ananthanarayanan is said to have been appointed in his place in June 2005 itself. The Director's affidavit is silent on the aspect of taking over of records from Shri Prasanna and delivery thereof to Shri Ananthanarayanan. In the normal course of business of a Company like the appellants, when an employee quits job, all the records in his possession will be taken and handed over to his successor-in-office.

The Director, who was in control over the functions of Shri Prasanna and Shri Ananthanarayanan, has maintained silence on the aspect of transfer of records. It is Shri Ananthanarayanan who says that he contacted Shri Prasanna over telephone and enquired about the receipt of the impugned order. As he was under supervision and control of Shri Karthikeyan, he must have done so under instructions of the latter.

This aspect has not been touched by any of the deponents. What has been offered in the two affidavits is a sort of explanation which is far from satisfactory.

4. Learned Counsel has relied on the judgment dated 19.2.1987 passed by a Bench of two judges of the Hon'ble Supreme Court in the case of MST.Katiji. Learned SDR has relied on the judgment passed later by a larger Bench of the Apex Court in case of Tata Yodogawa Limited (supra). We have got to follow the later decision of the larger Bench. Their Lordships, in the case of Tata Yodogawa Ltd (supra), were examining a delay condonation application filed by the department. After examining the explanation offered date-wise by the department, their Lordships held as under: From 26.12.1986 to 10.2.1987 and from 6.3.1987 to 24.3.1987 there is no cogent and possible explanation. It may be mentioned that the special leave petition was actually filed on 23.3.1987. There is no whisper to explain that "legal problems in filing the special leave petition arose" it appears to us that no attempt has been made to explain this delay. In that view of the matter we gave further opportunity to the petitioners to file additional affidavit explaining the cause, if any, for this delay. It is further stated in the rejoinder affidavit to the counter affidavit on behalf of the Respondents that "such delay is always beyond the control of especially in Government matters as the file has to be routed through several Sections of the Department". We are aware of the fact that Government being impersonal takes longer time than the private Bodies or the individuals. Even giving that latitude, there must be some way or attempt to explain the cause for such delay. As stated from the facts narrated herein above there is no sufficient cause to explain the delay. Hence the application for condonation of delay is dismissed.

Respectfully following the above decision of the Hon'ble Supreme Court, we dismiss the present application on the ground that the delay of 78 days has not been satisfactorily explained. Consequently, the appeal also gets dismissed as time-barred. The remaining application is also dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com