

(2015) 05 JH CK 0007
In the Jharkhand High Court
Case No : W.P. (T) No. 777 of 2015

Adhunik Power Transmission Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Finance Act, 1994 — Section 85

Citation : (2015) 52 GST 206

Hon'ble Judges : Dhirubhai Naranbhai Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Sumeet Gadodia, Advocate, for the Appellant; Deepak Roshan, Advocate, for the Respondent

Judgement

Dhirubhai Naranbhai Patel, J.—This writ petition has been preferred against the order passed by the Commissioner (Appeals) Central Excise & Service Tax, Ranchi, dated 13.08.2012. As there was no application for condoning the delay along with the memo of appeal, the delay was not condoned. Against this order, the present writ petition has been preferred. Counsel appearing for the petitioner submitted that Commissioner (Appeals) has all powers to condone the delay of 90 days. The delay of three months can be condoned by the Commissioner (Appeals), over and above the limitation period in preferring the appeal is three months. The order in original passed by the authority under the Service Tax Act was received on 18.11.2010. The memo of appeal was filed by this petitioner before the Commissioner (Appeals) on 02.03.2011. Thus, within 104 days the appeal was preferred. In fact, this appeal ought to have been preferred within the period of three months, and, there was a delay of 14 days. Office of the Commissioner (Appeals) had not pointed out this defect, and, therefore, petitioner has not filed delay of condonation application. It is further submitted by the learned counsel for the petitioner that no opportunity to file delay of condonation application was given by the office of the Commissioner (Appeals) to the petitioner. These aspects of the matter have not been properly appreciated by the Commissioner (Appeals), while dismissing the appeal preferred by this

petitioner vide its order dated 13.08.2012.

2. Counsel for the Union of India submitted that the petitioner is not a poor illiterate person, rather it is a company limited, and all the knowledge is being injected by the efficient lawyer, and, therefore, it is out of place to say that Commissioner (Appeals) should have pointed out to this petitioner that the petitioner must file delay of condonation application. It is submitted by the respondents that the petitioner should know what is Section 85 of the Finance Act, 1994. Delay of condonation application ought to have been preferred by the petitioner, and hence, there being no delay of condonation application, the Commissioner (Appeals) cannot presume the reasonable reasons, and, therefore, the delay could not be condoned by the Commissioner (Appeals) and thus, no error has been committed by the Commissioner (Appeals) in dismissing the appeal for want of delay of condonation application.

3. Having heard learned counsel for both the sides and looking to the facts and circumstances of this case, we see no reason to entertain this writ petition mainly for the following reasons:--

(i) The Respondents carried out audit within the premises of the petitioner between 22.08.2008 to 28.08.2008, and, it was found that wrongly cenvat credit was availed of Rs. 36701/- for outward transportation of the goods, which is not permissible, from the place of removal, and for that show cause notice was issued by the department upon this petitioner on 07.10.2009, and, thereafter, the order in original was passed, which was received by this petitioner on 18.11.2010, and, within three months appeal ought to have been preferred, if the petitioner so desires, but, instead of that, appeal was preferred within 104 days and thus, it was beyond the period of limitation, and, as no delay of condonation application was preferred, the delay was not condoned, and, the appeal was dismissed. Thus, no error has been committed by the Commissioned Appeals) as per Section 85 of the Finance Act, 1994.

(ii) Reasons cannot be presumed by the Commissioner (Appeals), much less reasonable reasons for condonation of delay. There ought to be an application for condonation of delay and thereafter the reasons can be appreciated by the concerned authority.

(iii) The contention raised by the petitioner that the office of the Commissioner (Appeals) should have pointed an office objection or defect in filing appeal, that the appeal is filed without any delay of condonation application, and, as there was no office objection found out, the petitioner had not filed any delay of condonation application. "This type of convenient" argument is not accepted by this Court, because the petitioner is a company limited and is not an illiterate ignorant person. Always petitioner is arguing the case with the help of the lawyers. Even otherwise also *ignorentia juris non excusate*. Thus, ignorance of law is not excuse. The petitioner cannot say that there ought to have been office defect pointed out by the office of Commissioner (Appeals), otherwise the

petitioner will never file delay of condonation application. Every body should know the law and should have filed the delay of condonation application, if there is only delay in preferring appeal.

As a cumulative effect of the facts and circumstances of this case, we see no reason to interfere with the order passed by the Commissioner (Appeals) dated 13.08.2012 which is at annexure-2 to the memo of this petition. There is no substance in this writ petition, hence the same is hereby dismissed.