

(2014) 11 MAD CK 0015

In the Madras High Court

Case No : Civil Miscellaneous Appeal Nos. 3030 and 3031 of 2014

Aircel Limited

APPELLANT

Vs

Customs, Excise and Service Tax Appellate Tribunal, Southern
Zonal Bench

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Citation : (2015) 38 STR 471

Hon'ble Judges : R. Sudhakar, J;R. Karuppiyah, J

Bench : Division Bench

Judgement

R. Sudhakar, J.

1. Heard Mr.R.Parthasarathy, learned counsel appearing for the appellant and Mr.A.P.Srinivas, learned Standing Counsel appearing for the second respondent.

2. These appeals are filed challenging the Final Order Nos. 40593 and 40594 of 2014 in Appeal Nos. ST/41424/2013-DB and ST/41425/2013-DB respectively, dated 16.7.2014 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai, raising the following question of law:

Whether the Tribunal is right in rejecting the condonation of delay applications filed by the appellant for condoning the delay of 311 days in filing the appeals?

3.1. The brief facts of the case are as under: The appellant is the provider of cellular mobile telephone services to their subscribers in Chennai, taxable under the category of "Telecommunication Services". Show cause notices were issued to the appellant alleging that they have availed credit based on invalid documents. The appellant submitted its objections. The Commissioner of Central Excise, Coimbatore, by order dated 10.5.2012, confirmed the demand of recovery of Cenvat Credit of Rs.1,66,50,707/- (in C.M.A.No. 3030 of 2014) and Rs.16,04,95,233/- (in C.M.A.No. 3031 of 2014) along with interest and also imposed equal penalty on the appellant.

3.2. According to the department, the above said order passed by the Commissioner of Central Excise, Coimbatore, was served on the authorised representative of the appellant company on 19.5.2012. Whereas, it is the plea of the appellant that they came to know about the fact that the Order-in-Original has been passed only when the Range Superintendent vide his letter in O.C.No. 153/2012, dated 8.2.2013 (which was received by the appellant on 19.2.2013) asked the appellant to provide update on certain cases. Based on such communication received from the department, the appellant pursued the matter individually and subsequently, the appellant received the copy of the order only on 29.4.2013.

3.3. Thereafter, the appellant filed appeals on 26.6.2013 along with applications for condonation of delay of 311 days, calculating the period after the expiry of the statutory period of 90 days from the date of service on the security personnel of the appellant on 19.5.2012. The reason for the delay has also been explained in the affidavits filed by the appellant. However, the Tribunal rejected the applications filed for condonation of delay on the ground that after the personal hearing before the adjudicating authority, there was no follow up by the appellant in respect of the proceedings and, therefore, it is a clear case of sheer negligence and inaction on the part of the appellant.

3.4. Aggrieved by the said order passed by the Tribunal, the present appeals are filed on the question of law raised supra.

4. We have perused the order passed by the Tribunal and documents filed in support of these appeals.

5. At the outset, we would like to observe that we are not happy with the reasoning given by the Tribunal for dismissing the applications filed by the appellant for condonation of delay of 311 days stating that the appellant having appeared in the personal hearing before the adjudicating authority, did not follow up the case. It is seen from the records that personal hearing in these matters took place on 13.10.2011 and the Order-in-Original is said to have been passed on 10.5.2012, namely, after a lapse of seven months. Before the Adjudicating Authority, there is methodology prescribed for prior intimation regarding the passing of the order or its despatch. Only when such order is received by the person concerned, he will be in the know of things. It is, therefore, necessary for a party to explain the delay from the date of actual service either on the person concerned or his authorized representative and such delay has to be properly explained when an appeal is filed after the statutory period prescribed. There is no necessity to go into the issue as to whether the party should pursue the matter before the adjudicating authority as to when he is going to pass the order. In our considered opinion, all that the Tribunal needs to decide is whether the delay of 311 days from the date of service of the order on the alleged authorized representative has been properly explained.

In such view of the matter, we set aside the order passed by the Tribunal and

allow these appeals by way of remand to the Tribunal for considering the issue as to whether the delay of 311 days in filing the appeals has been properly explained by the appellant. No costs. Consequently, M.P.No. 1 of 2014 (2 Petitions) are closed.