(2010) 02 AP CK 0058

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25315 of 2009

BMM Ispat Ltd. APPELLANT

Vs

Asstt. Commr. of Cus. RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Citation : (2010) 253 ELT 719

Hon'ble Judges : Ramesh Ranganathan, J;Goda Raghuram, J

Bench : Division Bench

Advocate : S.R.R. Viswanath, for the Appellant; A. Rajashekar Reddy, for the Respondent

Final Decision : Allowed

Judgement

Goda Raghuram, J.—The order of the learned Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore dated 3-4-2009 dismissing the COD Application No. 64 of 2009 in Customs Appeal No. 173 of 2009, communicated to the petitioner on 4-8-2009 is assailed in this writ petition.

2. The petitioner a company registered under the Companies Act engaged in the business of export of iron ore fines had filed shipping bill No. 21 dated 29-5-2007 before the 1st respondent for export of 10,000 MTs of iron ore fines.

3. Under the Customs Tariff Act, 1975, the export duty on iron ore and concentrates is specified at Rs. 300/- per MT. However, the Central Government issued a notification dated 3-5-2007 by way of an exemption in terms whereof iron ore fines of Fe content of 62% and below is subjected to export duty of Rs. 50/- per MT as against the tariff rate of Rs. 300/- per MT. An inspection agency namely M/s. Inspectorate Griffith India Pvt. Ltd., had certified the FE content in the iron ore fines exported by the petitioner to be at 61.90%. The petitioner therefore claimed export duty liability at Rs. 50/- per MT in terms of the notification of Government of India dated 3-5-2007.

4. The 1st respondent assessed the ore exported by the petitioner provisionally

on payment of duty at the rate of Rs. 50/- per MT pending a test report, on a Provisional Duty Bond furnished by the petitioner undertaking to pay the differential duty of Rs. 25,00,000/- (at Rs. 250/- per MT) along with interest, in case the FE content is eventually found to be in excess of 62% on testing. The 1st respondent allowed export of the consignment after drawal of a representative sample. On examination by the Chemical Examiner, Customs House Laboratory, Visakhapatnam the Fe content was stated to be 62.59% by weight. Based on such Chemical Examiner''s report, the 1st respondent directed the petitioner to remit the differential duty along with interest, failing which the Bank guarantee furnished by the petitioner would be appropriated. At the personal hearing accorded by the 1st respondent on 18-9-2009, the petitioner contested the method of drawal of samples and requested for re-testing by the Central Revenue Laboratory (CRL), New Delhi while undertaking to keep the Bank guarantee alive till the proceedings are completed. Eventually the sample was sent to the CRL for re-testing.

5. However, by an order dated 27-9-2007 the 1st respondent confirmed the demand for differential duty on the basis of the Chemical Examiner''s test report and initiated a process to encash the Bank guarantee furnished by the petitioner. By an interim order dated 11-10-2007 in W.P. No. 21977 of 2007 filed by the petitioner this Court restrained the 1st respondent from enabling the Bank guarantee, until further orders. The writ petition was however disposed of by the order dated 3-3-2008 relegating the petitioner to avail the appellate remedy. The petitioner preferred an appeal to the 2nd respondent, who, eventually passed Order-in-Appeal No. 33 of 2008 (V-II)-CUS., dated 13-6-2008 rejecting the appeal of the petitioner while refusing the plea of the petitioner to keep the appeal pending till the report of the re-test by the C.R.L. is obtained. The petitioner received the report of re-test by the CRL dated 5-5-2008 through the covering letter of the 1st respondent dated 3-2-2009. Aggrieved by the appellate order dated 13-6-2008 passed by the 2nd respondent, the petitioner preferred an appeal before the CESTAT, Bangalore enclosing the test report of the CRL and seeking substantive relief in the matter of the duty payable i.e., claiming the liability at Rs. 50/- per MT. The appeal was filed belatedly along with an application COD No. 64 of 2009 seeking condonation of a delay of 146 days in preferring the appeal. The reason for the delay as stated in the affidavit accompanying COD Application No. 64 of 2009, was a communication gap between the petitioner and its authorised representative who handles the legal affairs of the petitioner.

6. By the order impugned, the CESTAT found no reasonable cause for condoning the delay and dismissed COD Application No. 64 of 2009 and consequently the appeal would stand dismissed. Hence the writ petition.

7. That the CRL, New Delhi''s report dated 5-2-2008 has certified that the FE content in the iron ore fines exported by the petitioner was 61% is borne out by the letter dated 5-5-2008 addressed by the 1st respondent to the petitioner. In

the circumstances, the petitioner may perhaps be entitled to the duty of Rs. 50/- per MT, in terms of the Government of India exemption notification dated 3-5-2007. The petitioner has thus an eminently arguable case on merits before the CESTAT, in the appeal preferred against the order of the 2nd respondent dated 13-6-2008 rejecting the appeal preferred by the petitioner. Though the reasons set out by the petitioner for seeking condonation of the delay of 146 days in preferring the appeal do not appear to be substantial, we are of the view that having regard to the petitioner having on the merits of the appeal before the CESTAT, an eminently arguable case and the delay not being inordinate, are of the opinion that discretion ought to have been exercised by the CESTAT, for condonation of delay on reasonable terms.

8. Having heard the counsel for the petitioner and Sri A. Rajasekar Reddy, learned Counsel for respondents 1 and 2, we consider it appropriate, in the facts and circumstances of this case, to allow the writ petition. The delay of 146 days in the petitioner preferring an appeal to the CESTAT, South Zonal Bench, Bangalore against the order of the 2nd respondent dated 13-6-2008, is condoned on condition that the petitioner deposits with the 1st respondent Rs. 25,000/- (Rupees Twenty five thousands) towards costs for the delay, within a period of three weeks from today. On proof of such deposit with the 1st respondent being presented before the CESTAT, the CESTAT, South Zonal Bench, Bangalore shall process consideration of Customs Appeal No. 173 of 2009 in accordance with law and may consider expeditious disposal of the same. In default of the deposit of costs as directed herein and within the time stipulated, the writ petition shall stand dismissed.

9. The writ petition is allowed. There shall however be no order as to costs.

