

(2013) 11 BOM CK 0145
In the Bombay High Court
Case No : Excise Appeal No. 4 of 2013

Commissioner of C. Ex.

APPELLANT

Vs

Pratima Furniture and Decorators

RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Citation : (2014) 306 ELT 582

Hon'ble Judges : F.M. Reis, J;B.R. Gavai, J

Bench : Division Bench

Judgement

B.R. Gavai, J.—The appeal challenges the order dated 14-11-2012 thereby rejecting the application filed by the appellant for condonation of delay in filing the appeal. Heard Mr. Ferreira, learned Assistant Solicitor General appearing for the appellant-Revenue and Mr. Bhobe, learned counsel appearing for the respondent.

2. The appeal is admitted on the following substantial question of law. Whether the learned Tribunal was justified in rejecting the application for condonation of delay filed by the appellant by overlooking the provisions of sub-section (5) of Section 35B of the Central Excise Act?

3. Mr. S.G. Bhobe, learned counsel waives service on behalf of the respondent.

4. Mr. Ferreira, learned Assistant Solicitor General appearing for the appellant-Revenue submits that the learned Tribunal has failed to take into consideration sub-section (5) of Section 35B of the Central Excise Act which empowers the learned Tribunal to condone the delay. He further submits that a sufficient case was made out by the appellant which has not been taken into consideration by the learned Tribunal.

5. Mr. Bhobe, learned counsel appearing for the respondent on the contrary submits that no explanation for almost period of five months for not filing the appeal before the Commissioner has been given while seeking the condonation of

delay and as such, no interference is called for.

6. We have perused the grounds which are raised by the appellant-Revenue for seeking the condonation of delay. From the grounds stated in the application which reveal that initially when the matter was placed before the Commissioner, he had recommended the acceptance of the appeal. However, the matter was placed before the Committee of the Commissioners consisting of the Commissioner of Goa and the Commissioner of Belgaum. However, in the meantime, the Commissioner of Belgaum had proceeded on leave and therefore, the additional charge was given to the Commissioner of Mangaluru. Thereafter, the file was sent to the Commissioner of Mangaluru who was holding the additional charge of Belgaum. He had given his view differently and suggested to file an appeal. Since there was difference of opinion between the Commissioners, the matter was sent to the Chief Commissioner, Pune who recommended to file an appeal.

7. It can thus be clearly seen that it is not as if the appellants were not doing anything in the matter and have not taken any steps for filing the appeal. The delay has occasioned on account of the procedural aspects. After the Commissioner of Goa decided to accept the order, the matter was required to be sent to the Commissioner of Belgaum who was another member of the Committee. Since the Commissioner of Belgaum had proceeded on leave and the additional charge was given to the Commissioner of Mangaluru, the file was required to be sent to the Commissioner of Mangaluru. Since the Commissioner of Mangaluru had different opinion with Commissioner of Goa and recommended to file an appeal, the matter was required to be sent to the Chief Commissioner, Pune.

8. We, therefore, find that it would be in the interest of justice to condone the delay. Instead of non-suiting the appellant on the technical ground, it would be appropriate that the dispute between the parties is decided on merits. In so far as the prejudice that is being caused to the respondent is concerned, the same can be compensated by awarding the costs to the appellant. The appeal is therefore allowed. The impugned order is quashed and set aside. The delay in filing the appeal before the learned Tribunal is condoned. However, the same is subject to the costs which are quantified at Rs. 25,000/- to be paid by the appellant to the respondent. The payment of costs shall be condition precedent for entertaining the appeal by the learned Tribunal. The appeal stands disposed of.