(2015) 01 KAR CK 0193

In the Karnataka High Court

Case No : Central Excise Appeal No. 100010/2014

Commissioner of Central Excise and Service Tax APPELLANT

Vs

Adarsh Alloys RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:
Central Excises and Salt Act, 1944 — Section 37C

Citation : (2015) 322 ELT 719

Hon'ble Judges : P.D. Waingankar, J.;A.S. Bopanna, J.

Bench : Division Bench

Advocate : S.C. Bheemaraddi, for the Appellant

Judgement

1. The revenue is in appeal before us assailing the decision dated 27/12/2013 made by the Customs, Excise and Service Tax Appellate Tribunal (''CESTAT'' for short), South Zonal Branch, Bangalore. In respect of the order in original where under a penalty of Rs. 26,52,698/- was imposed on the respondent herein, an appeal had been filed by the assessee before the Appellate Authority. The Appellate Authority by order dated 29/08/2013 had dismissed the appeal on the ground of delay and held that the appeal is rejected as not maintainable.

2. In that view, the respondent herein filed an appeal before the CESTAT. The CESTAT on considering the matter was of the view that the Appellate Authority was not justified in permitting the respondent-assessee to cross-examine the witnesses on the aspect relating to the service of notice and the order on the respondent. The learned counsel for the appellant while assailing the order would take us through the order dated 29/08/2013 passed in appeal. The appellate authority had taken note of the proviso contained in Section 37C of the Central Exercise Act which provides for service of notice, orders etc. In that view, it is contended that in the instant case apart from dispatching the notice and order to the respondent-assessee by registered post acknowledgment due, service was also made and a mahazar had been drawn in that regard. It is therefore contended that in such circumstance, the CESTAT was not justified in remanding

the matter providing an opportunity to the respondent to cross-examine the witnesses. The respondent though served is unrepresented.

3. In view of the contentions put forth, we have perused the order in appeal. It is not in dispute that the appeal filed is after 4 years from the date of the order in original. It is in that circumstance, a question had arisen as to whether the appeal would be maintainable after such long delay.

4. In order to contend that there was no delay in filing the appeal, the respondent-assessee had put forth the contention that the mahazar as had been drawn is not in accordance with law and the witnesses who have subscribed their signature to the mahazar are not persons who are residents of the, said area. In effect the respondent had contended that notice/orders had not been served on him and therefore the delay in filing the appeal cannot be attributed to him. The appellate authority rejected such contention and passed the order. The CESTAT while taking note of the said contention and having noticed that the respondent herein had disputed that the mahazar was drawn and actually the impugned order was pasted on other premises, found it necessary that the said aspect requires consideration after permitting cross-examination of the witnesses. In fact one of the contentions as raised by the respondent was rejected and only an opportunity has been granted by the CESTAT to cross-examine the witnesses to establish the fact that the notice in fact had not been served by pasting it on the premises.

5. Though the learned counsel for the appellant has vehemently contended that the CESTAT was not justified in doing so, on giving our consideration to that aspect of the matter, we are of the opinion that in the circumstance where an opportunity is granted to the respondent, if the respondent establishes that the notice/orders had not been served, all that would flow is that the appellate authority would have to thereafter consider the appeal on its merit rather than dismissing it for delay. On the other hand, even after an opportunity for cross-examination, if the appellate authority finds that the notice/orders served was in accordance with law and the mahazar was drawn as per the procedure, the appellate Tribunal would only reiterate its consideration based on the evidence that would be available.

Therefore, we see no reasons to interfere with the order impugned herein.

The appeal being devoid of merit stands disposed of.

