(2012) 04 CAL CK 0060

In the Calcutta High Court

Case No : CEXA No. 9 of 2004 and GA No. 2107 of 2004

Commissioner of Central Excise — APPELLANT

Vs

Fabricast Industries — RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2013) 292 ELT 188

Hon'ble Judges : Kalyan Jyoti Sengupta, J;Asim Kr. Mondal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is an application for condonation of delay of about 556 days in preferring this appeal. Several attempts were made to serve upon the respondents. However, the place of office of the respondents is not traceable. Substituted service by advertisement would be a futile exercise as the amount of tax involved in this matter would not commensurate to amount of expenditure likely to be incurred. We, therefore, examine this application and we have gone through the explanations sought to be given by the department. It appears that the officials of the department for nothing sat tight over the matter and did not take any action bona fide for preferring this application. We fail to understand as to why the officials of the department will obtain opinions after opinions from various authorities and officials. Nothing has been produced to support that such opinions of various authorities and officials are needed. It also appears that at one point of time grounds of appeal were prepared by the Inspector (T & R) instead of sending to the learned lawyers. We further notice that on 23rd July, 2003 it was decided that counsel should be engaged for drafting and setting reference application u/s 5 of the Limitation Act, 1963. Then Mr. Sakya Sen, learned Advocate, was engaged for this purpose. Therefore, it is clear that actual action had been taken almost after more than one year unnecessarily wasting time. It is stated that the learned counsel postponed dates of holding conference

for no disclosed reason. Thereafter, we notice that there has been again change of lawyer. These are in our unacceptable explanation.

2. We, therefore, dismiss this application holding that delay has not been explained at all.

3. In view of dismissal of the application for condonation of delay, the appeal is also dismissed. Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.