(2015) 01 MAD CK 0208

In the Madras High Court

Case No : C.M.A. No. 1502 of 2007

Commissioner of Central Excise APPELLANT

Vs

The Concrete Products and Construction Company and Others RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Citation : (2015) 320 ELT 573

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

Bench : Division Bench

Advocate : Haja Mohideen Ghisti, for the Appellant; Arun Kurien Joseph, Advocates for the Respondent

Judgement

R. Sudhakar, J.—Aggrieved by the order of the Tribunal in dismissing the appeal filed by it, the Revenue is before this Court by filing the present appeal. This Court, vide order dated 26.07.2007, while admitting the appeal, framed the following substantial questions of law for consideration :-

"i) Whether the Hon''ble Tribunal is right in dismissing the condonation of delay petition when sufficient reasons were given for the condonation of delay?

ii) Whether the Hon''ble Tribunal is right in dismissing the condonation of delay petition which throws the meritorious matter out of the threshold level without considering the judgments of the Hon''ble Apex Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and State of Nagaland Vs. Lipok AO and Others, ?

Iii) Whether the Tribunal is justified in dismissing the main appeal itself while rejecting the prayer for condonation of delay?"

2. The short facts of the case are that the 1st respondent is a manufacturer of concrete sleepers and suppliers to the Indian Railways. The contract is for a fixed quantity. The contract envisages price variation clause, which is determined as

per the standard norms fixed by the Government agencies/board. Escalation claims are preferred on regular basis, which on acceptance by the Railways, differential duty is paid. Due to escalation, price of the material cost/labour is not possible to be given at a given point of time. The Assistant Commissioner of Central Excise, Vellore, finalized the provisional assessment for the period from March, 2003 to September, 2003 under rule 7 (3) of the Central Excise Rules and demanded interest of Rs.42,484/- on the differential duty. Aggrieved by the said assessment, the assessee preferred appeal before the Commissioner (Appeals), who allowed the appeal filed by the assessee against which the Revenue preferred appeal, however with an application seeking condonation of delay of 39 days in filing the appeal. However, the Tribunal rejected the said application seeking condonation of delay. Aggrieved against the said order of the Tribunal, the appellant/Department is before this Court by filing the present appeal.

3. It is submitted by the learned counsel appearing for the appellant that since the decision on filing of appeal is taken by a Committee of Commissioners, there is no scope for the Commissioner concerned to take an individual decision and, therefore, the delay has envisaged. The Tribunal ought to have taken the said fact into consideration and allowed the petition, which it failed to do and, therefore, the said order of the Tribunal is liable to be set aside. Learned counsel for the respondent has no serious objection in allowing this appeal.

4. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the order passed by the Tribunal and the other materials available on record.

5. Even at the outset this Court is not inclined to agree with the finding of the Tribunal refusing to condone the delay of 38/39 days in filing the appeal. The reason for the delay has been explained by the appellant, the relevant portion of which has been extracted by the Tribunal in its order and for better clarity, the same is extracted hereinbelow :-

"a) A delay was caused due to protracted correspondences with the said office to clarify on this issue.

b) Normally, the Committee of Commissioners used to be convened on the 10th and 25th day of every month. But an unavoidable delay occurred to convene the Committee because the Commissioners comprising the Committee were pre-occupied with the work relating to the standing committee and other administrative reasons which were neither deliberate nor intentional."

6. From the above explanation offered by the appellant, it is clear that a decision was taken by a Committee of Commissioners and, therefore, there is no scope for the concerned Commissioner to interdict and seek for earlier review by the Committee. The delay was not within the hands of the concerned Commissioner. The decisions of the Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and State of Nagaland Vs. Lipok AO and Others, relied on by the counsel for the appellant is squarely applicable to the

facts of the present case as sufficient cause has been shown for condoning the delay. In the circumstances, without going into the questions of law raised, this Court is of the considered view that the order passed by the Tribunal is liable to be set aside.

7. Accordingly, for the reasons stated above, the appeal is allowed and the order passed by the Tribunal is set aside. The appeal filed before the Tribunal is directed to be numbered and the Tribunal is requested to dispose of the appeal on merits at the earliest. In the circumstances of the case, there shall be no order as to costs.