(2012) 05 CAL CK 0018

In the Calcutta High Court

Case No : CEXA No. 16 of 2004 and GA No. 4537 of 2004

Commissioner of Central Excise, Cal.-VI — APPELLANT

Vs

Visuvious India Ltd. — RESPONDENT

Date of Decision : 04-05-2012

Acts Referred:

Citation : (2012) 281 ELT 668 : (2012) 28 STR 550

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

Bench : Division Bench

Advocate : Bhaskar Sen, for the Appellant; Roy Chowdhury, for the Respondent

Judgement

1. This is an application for condonation of delay of about 579 days. This matter was filed in the year 2004 and no steps were taken by the department to bring it in the list. The officials of the department and of this court got the matter enlisted for it being dealt with in a proper manner.

2. On April 24, 2012, the matter came up in the list and was adjourned till May 2, 2012. When the matter again appeared in the list on May 2, 2012, it was adjourned till May 4, 2012.

3. Before that, the matter was placed in the list on February 27, 2012. The matter was then adjourned till March 12, 2012 and then again on March 27, 2012 on which date the directions for filing affidavits were given. After the filing of affidavits, the matter was taken up for hearing.

4. Having found the statements made in the petition, we asked the petitioners to serve a copy of the same upon Mr. Bhaskar Sen, senior advocate, who is said to have returned the brief without doing anything else. Mr. Sen appeared in the court and made a statement to the effect that while it was true that the brief was given to him, but when he found that the application was barred by limitation, as such he returned the brief. The factum of return of the brief by Mr. Sen is proved.

5. Mr. Roy Chowdhury is said to have settled both the application and the appeal.

But it is said that the brief papers were misplaced amongst the senior counsel''s papers.

6. This is the explanation from August 30, 2004 till November 25, 2004 and thereafter on December 23, 2004, the application was filed.

7. The delay is sought to be explained by making a statement that there has been exchange of correspondence for taking steps in the matter amongst the various departments. All these statements are not supported by any document whatsoever. In the absence of document, this court is unable to believe all these statements.

8. It is true that the department acts on the basis of the action of the departmental officers. But there is a limit of inaction on the part of the departmental officials. Going by the apparent reading of the statements, it is hard to believe that the officials of the department would be inactive to such extent that has been projected in the application as because no document has been annexed supporting such statement. The involvement of tax amount, according to the learned counsel, Rs. 28 lakhs. At present, in view of the decision of the Government, where the tax involvement is upto Rs. 10 lakhs, no action shall be taken, and for the balance amount of Rs. 18 lakhs, the proceeding ought not to be continued.