(2014) 08 MAD CK 0083

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 2088 of 2007 and M.P. No. 1 of 2007

Commissioner of Service Tax APPELLANT

Vs

J.M. Baxi and Co. RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Citation : (2014) 36 STR 965

Hon'ble Judges : R. Sudhakar, J;G.M. Akbar Ali, J

Bench : Division Bench

Judgement

R. Sudhakar, J.—This appeal is preferred against the order of the 2nd respondent in Final Order No. 195/2007, dated 2-3-2007 (2007 (7) S.T.R. 197 (Tri.-Chen.)). The appeal is filed by the Revenue on the following substantial questions of law:-

(i) Whether the Tribunal failed to adopt a pragmatic and justice oriented approach in the matter of condonation of delay in filing the statutory appeal?

(ii) Whether the Tribunal is right in not considering the sufficient cause shown by the appellant for seeking condonation of delay especially when the respondent/ assessee had not placed any material to dispute the cause pleaded by the appellant department?

(iii) Whether the Tribunal failed to appreciate in a proper perspective the observations of the Hon''ble Supreme Court in several decisions about the manner in which application for condonation of delay has to be dealt with?

2. Heard the learned standing counsel appearing for the appellant and the learned counsel appearing for the respondent.

3. It is seen from the affidavit that the condonation of delay application was filed before the Tribunal by the appellant herein challenging the order of the Commissioner (Appeals) dated 19-11-2005 in a case of service tax demand. The appeal has been filed before the Tribunal with a delay of 98 days stating that the impugned order of the Commissionerate was received on 6-12-2005. In the

affidavit filed before the Tribunal, it is averred, that the appeal could not be filed in the normal course due to official exigencies and, therefore, in the application for condonation of delay has been filed wherein the time chart is filed by the Revenue, which is a rarity at that point of time, explaining the reasons for the delay, which is extracted hereunder:-

4. From the above time chart, it is evident that the issue has been taken by the appellant before the Board for its approval to file appeal and as a consequence, delay occasioned. We find that the decision of the Hon''ble Supreme Court in State of Nagaland Vs. Lipok AO and Others, , wherein the Hon''ble Supreme Court has held that some latitude is permissible to the Department in respect of filing of appeals, where the Government is the appellant, is squarely applicable to the present case.

5. The facts and circumstances of the present case clearly justifies condonation of delay of 98 days, in any event, 48 days from the date the Board granted its approval, wherein after some time is required for preparation and filing of the appeal. The Tribunal should have taken a pragmatic view and should have condoned the delay in filing the appeal on the facts and circumstances of the case, which the Tribunal failed to do. Therefore, this Court is of the considered view that the impugned order passed by the Tribunal is liable to be set aside. Accordingly, the appeal is allowed and the Tribunal is directed to take up the appeal filed by the appellant on file and dispose of the same expeditiously. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.