(2016) 02 MAD CK 0217

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 119 of 2016 and C.M.P. No. 1087 of 2016

Excel Shipping Services APPELLANT

Vs

Commr. of Cus., Coimbatore RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Citation : (2016) 336 ELT 472

Hon'ble Judges : V. Ramasubramanian and N. Kirubakaran, JJ.

Bench : Division Bench

Advocate : T. Sundaranathan, Advocate, for the Appellant; A.P. Srinivas, SSC, for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—This appeal is filed by the assessee under Section 130 of the Customs Act, 1962, challenging the order of the Tribunal [2014 (312) E.L.T. 94 (Tribunal)], refusing to condone the delay of 546 days in filing the appeal.

2. We have heard Mr. T. Sundaranathan, learned counsel for the appellant and Mr. A.P. Srinivas, learned Senior Standing Counsel appearing for the first respondent.

3. As against the Order-in-Original dated 28-5-2009, the appellant filed an appeal on 21-2-2011 with a delay of 546 days. The reason for the delay was stated to be the non-service of the copy of the Order-in-Original.

4. The Department relied upon a letter issued by the Manager of the Speed Post Centre to the following effect :-

"It is to inform you that the Speed Post Letter with Transaction No. ET531150012IN booked on 29-6-2009 at NPSC Coimbatore RMS addressed to M/s. Excel Shipping Services, No. 606, K.M. Towers, Binny Compound II Street, Kumaran Road, Tirupur 641 601 was received by Tirupur HPO, the delivery Office on 30-6-2009 and returned to Sender with remarks ?Unclaimed? on 7-7-2009. The Speed Post was undelivered to your Office on 8-7-2009. The copy of delivery slip is enclosed herewith for your kind information."

5. On the basis of the said letter, the Tribunal came to the conclusion that the delay was not properly explained. Consequently, the Tribunal dismissed the application.

6. It is seen from the Order-in-Original that the same was directed against several individuals, including the exporter. The matter related to Duty Drawback. The appellant herein was the Customs House Agent, whose services were engaged by the exporter. Therefore, the role that is attributed to the appellant was that of an abettor.

7. Keeping the above in mind, if we have a look at the order of the Tribunal, it is seen that the same was based entirely upon the letter of the Speed Post Centre. Unfortunately, the Department did not have the returned cover itself. Therefore, the question as to whether there was another endorsement to the effect "intimation delivered" or not is not known. From the mere endorsement "unclaimed", it cannot be concluded whether the intimation was delivered or not. Unless both endorsements go together, the presumption of service cannot be made.

8. Moreover, in a communication dated 21-12-2011, the Additional Commissioner admitted that the Order-in-Original was not made known to the appellant in any other manner. This is despite the fact that under Section 153(b) of the Act, there is a provision for affixure of the order on the notice board of the Customs House. It is not a case of the Department that there was affixure.

9. Since these aspects were not taken into account by the Tribunal, the appeal is allowed and the order of the Tribunal is set aside. The Tribunal is directed to take up the application for waiver of pre-deposit and deal with it in accordance with law. Consequently, C.M.P. No. 1087 of 2016 is closed.