(2013) 11 JH CK 0100

In the Jharkhand High Court

Case No : W.P. (T) No. 5929 of 2012

Fertilizer Corporation of India Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Citation : (2014) 302 ELT 499

Hon'ble Judges : R. Banumathi, C.J;Aparesh Kumar Singh, J

Bench : Division Bench

Judgement

1. Being aggrieved by the order dated 24-4-2012 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata in Excise Appeal Nos. 379-380 of 2005 [2012 (282) ELT 463] dismissing the application filed by the writ petitioner/assessee to condone the delay, the writ petitioner has filed this writ petition. The Excise Commissioner, Central Excise, Ranchi passed the Order-in-Original No. 83-84/MP/Commr/2004-05 dated 28-10-2004. The said order was received by the writ petitioner on 8-11-2004. As per Section 35B(3) of Central Excise Act, the appeal ought to have been filed within a period of three months from the date of receipt of copy of the order, that means, the appeal ought to have been filed on or before 8-2-2005, but the appeal was filed on 27-7-2005 with the delay of 170 days. The writ petitioner/assessee filed an application u/s 35B(3) of Central Excise Act before the learned Tribunal to condone the delay of 170 days. The writ petitioner contended that the company was declared sick and proceedings have been initiated in the High Court of New Delhi for winding up. There are 17 skeleton staff working in the writ petitioner company and therefore, it was not possible for them to keep track of the things. Therefore, the appellant could not file the appeal in time.

2. After hearing the petitioner/assessee and also the department, the Tribunal dismissed the application holding that the delay for the period in between 4-2-2005 to 5-4-2005, 26-4-2005 to 9-6-2005 and 9-6-2005 to 27-7-2005 has not been satisfactorily explained by the writ petitioner.

3. Challenging the impugned order, the writ petitioner/assessee has filed the instant writ petition. Learned Senior Counsel for the writ petitioner submits that when the writ petitioner/company was already declared sick and proceedings have been initiated in the High Court of Delhi for winding up the company and there are skeleton staff working in the petitioner company, it was not possible for the writ petitioner to take steps for filing the appeal in time.

4. Learned counsel for the Department has drawn our attention to the various dates and submitted that even though, the petitioner had received the communication from the office to file appeal, but the writ petitioner had not taken prompt steps in filing the appeal and delay has not been properly explained. Learned counsel further submits that the Writ Court while exercising their discretionary jurisdiction under Article 226 of the Constitution of India to condone the delay in filing the appeal may not interfere with the discretion so exercised.

5. Section 35B(3) of Central Excise Act provides that every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against, is communicated to the Commissioner of Central Excise or as the case may be, the other party preferring the appeal. Section 35B enables the Appellate Tribunal to condone the delay on sufficient grounds being shown. Section 35 of Central Excise Act reads as under:

35. Appeals to Commissioner (Appeals). - (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer lower in rank than a Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals) (hereafter in this Chapter referred to as the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

The point falling for consideration before us is, whether the writ petitioner has satisfactorily explained the delay in filing the appeal?

6. As rightly pointed out by the learned Senior Counsel appearing for the writ petitioner, the petitioner company was declared sick and proceedings were initiated in Delhi High Court for winding up. There were only skeleton staffs working in the writ petitioner company due to which, it was not possible for them to keep track of the things. Because the Advocates gave legal opinion on 2-2-2005 informing the writ petitioner that they have a good case for filing an appeal. Thereafter, the writ petitioner applied to the High Power Committee for

COD clearance and only after obtaining clearance, the appeal could be filed. When the writ petitioner has been declared a sick company and proceedings have been initiated for winding up and when the writ petitioner was entangled in litigation and other consequential proceedings, they cannot be expected to take prompt steps for filing the appeal. Even though, the Writ Court will not normally interfere with the discretion exercised by the Tribunal, but in this case, having gone through the fact that the proceedings have been initiated against the writ petitioner/company, we are of the view that it is a fit case to condone the delay. The order dated 24-4-2012 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata in Excise Appeal No. 379/380 of 2005, is hereby set aside. The writ petition is allowed. The delay in filing the appeal before the Tribunal is condoned. Tribunal is directed to take the appeal and the stay application, in accordance with law.

