(2015) 04 P&H CK 0392

In the Punjab And Haryana At Chandigarh

Case No : Service Tax Appeal No. 29 of 2014 (O&M)

Kaushal Construction Co. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Citation : (2015) 40 STR 38

Hon'ble Judges : S.J. Vazifdar, A.C.J;Gurmeet Singh Sandhawalia, J

Bench : Division Bench

Advocate : Jagmohan Bansal, for the Appellant; Sukhdev Sharma, Advocates for the Respondent

Judgement

S.J. Vazifdar, Actg. C.J.

1. This is an appeal against the order of the CESTAT dismissing the appellant''s appeal only on the ground that there was a delay of 262 days. The appeal is admitted on the following substantial question of law:--

"Whether in the facts and circumstances of the case, the CESTAT was correct in dismissing the appellant''s appeal on the ground of delay?"

2. The order impugned before the CESTAT was received by the appellant on 4-8-2013. The CESTAT held that there was no explanation for the delay in the original period of 90 days from 4-8-2013. We find, however, that within the original period of limitation, the appellant had, in fact, forwarded the papers to the consultants to file the appeal. The consultant, however, did not file the appeal in time. The Tribunal did not accept that to be a sufficient reason for the delay and inferred that the appellant was not following up the matter. It is important to note that during the initial period itself, the brother of the sole proprietor of the appellant fell ill and that he was being looked after by the sole proprietor of the appellant firm. Unfortunately, the brother expired on 11-6-2014 after a prolonged illness.

3. We do not see how these two facts taken together cannot constitute sufficient cause for the delay in filing the appeal. The appellant ought not to be visited with the drastic consequence of dismissal of the appeal without the same being considered on merits on account of the Advocate/consultant''s default in not having filed the appeal in time. Added to this is the fact that during the original period of limitation it is not as if the appellant was guilty of any negligence. The appellant was pre-occupied in looking after his ailing brother. In the circumstances, the question of law is answered in favour of the appellant. The appeal is allowed. The impugned order and judgment is set aside. The matter shall be heard by the CESTAT on merits.