

(2014) 01 MAD CK 0132

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 3280 of 2073 and M.P. No. 1 of 2013

Maasha Allah Agencies

APPELLANT

Vs

Commr. of Cus. (Seaport Imports)

RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226
Customs Act, 1962 — Section 146

Citation : (2014) 306 ELT 31

Hon'ble Judges : T.S. Sivagnanam, J;Chitra Venkataraman, J

Bench : Division Bench

Judgement

T.S. Sivagnanam, J.—This appeal by the Customs House Agent is directed against the Final Order dated 3-6-2013 made in C/COD/40268/2013 passed by the Central Excise and Service Tax Appellate Tribunal (hereinafter called as the "Tribunal"), South Zone, Chennai. By the said order, the Tribunal dismissed the application filed by the appellant seeking condonation of delay of 413 days in filing the appeal before the Tribunal. The appellant seeks admission of the appeal on the following substantial questions of law:-

"(1) Whether the lower court is right in dismissing the appeal without giving the opportunity as per the principles of natural justice and equity as enshrined under Articles 14, 19 and 21 of the Constitution of India.

(2) Whether the lower court is right in dismissing the petitioner especially when the appellant had categorically stated in his petition about his illness and the same has been extracted in order.

(3) Whether the lower authority is right in dismissing the petition in the light of the legal proposition "any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Court cannot interfere in a matter, after the passage of a certain length of time - There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere inspite of delay - discretion must be

exercised judiciously and reasonably - in the event that the claim made by the appellant is legally sustainable, delay should be condoned - When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in the injustice being done, because of a non-deliberate delay - The Court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the petitioners".

We have heard Mr. Manoj Sreevalsan, learned counsel appearing for the appellant and Mr. K. Rajasekar, learned Standing Counsel appearing for the Customs Department.

2. The appellant is a licenced Customs House Agent, which is valid up-to 7-1-2020 granted under Section 146 of the Customs Act. The appellant handled, the customs clearance work for an importer viz., M/s. Quick Systems. In the Bill of Entry, the goods were declared as Chinese Mobile Phones. In the course of Investigation conducted by the DRI, it was found that none of the retail packages housing the mobile phones were affixed with the mandatory MRP label as required under the Legal Metrology (Packaged Commodities) Rules, 2011. A show cause notice was served on the appellant dated 24-8-2011 and also on the importer alleging that the appellant had violated the provisions of the Customs Act by not ensuring the compliance of Section 146 of the Customs Act and the Rules and Regulations framed thereunder.

3. The appellant submitted his reply and the Adjudicating Authority, by order dated 2-9-2011 imposed penalty of Rs. 50,000/- on the Authorised Signatory of the appellant. As against such order, the appellant preferred appeal before the Tribunal, which is stated to be pending. In the mean time, the first respondent-Commissioner of Customs, passed the order under Regulation 20(3) of the Custom House Agents Licensing Regulations, 2004, suspending the appellant's customs house licence agent with immediate effect. Challenging the said order, the appellant preferred appeal before the Tribunal. Since there was a delay in filing the appeal, the appellant filed an application to condone the delay of 413 days in filing the appeal. The reasons assigned by the appellant was that the Authorised Signatory was suffering from mental imbalance and spent considerable amount for his treatment and owing to financial difficulty, he was not able to prefer appeal, within the statutory period and there was delay.

4. The Tribunal rejected the petition stating that it is a case of sheer negligence and inaction on the part of the applicant and there is no reason for condonation of delay of filing the appeal. Aggrieved by such order, the present, Civil Miscellaneous Appeal is filed seeking admission on the, substantial questions of law referred supra.

5. Admittedly, Law of limitation is founded on public policy, not meant to destroy the rights of parties, but to ensure that parties do not resort to dilatory tactics. There was no material produced by the respondent Department stating that the

reasons assigned by the appellant was false or the Appellant adopted dilatory tactics or with mala fide intention filed the appeal belatedly. The appellant would contend that the Authorised Signatory was suffering from mental imbalance and considerable amount was spent for treatment and delay of 413 days occurred in preferring the appeal and the other appeal against the order of Adjudicating Authority was also pending before the Tribunal, which explanation could be accepted as sufficient cause for having been prevented to file the appeal within the period of limitation and it cannot be stated that the Appellant was totally lethargic or utterly negligent. In such circumstances, we deem it appropriate that the delay in filing should be condoned. Hence, for the above reasons, delay of 413 days is condoned and the Tribunal is directed to entertain the appeal filed by the appellant and proceed in accordance with law. The Civil Miscellaneous Appeal stands ordered on the above terms. No costs. Consequently connected MP is closed.