(2009) 05 OHC CK 0043

In the Orissa High Court

Mahanadi Casting Pvt. Ltd. APPELLANT

Vs

The Commissioner of Central Excise and Customs and Another RESPONDENT

Date of Decision : 01-05-2009

Acts Referred:
Limitation Act, 1963 — Section 5

Citation : (2009) 108 CLT 498 : (2009) 2 OLR 867 Supp

Hon'ble Judges : L. Mohapatra, J;I. Mahanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I. Mahanty, J.—In this appeal M/s Mahanadi Castiing Pvt. Ltd. (Petitioner-Company) has challenged the Order Dated 12.7.2006 - (sic)ssed by the Customs, Excise & Service Tax Appellate Tribunal, Kolkata, Eastern Zonal Bench, Kolkata. This appeal has been filed on 21.1.2009 along with a petition for condonation of delay u/s 5 of the Limitation Act.

2. Objection to the limitation petition has been filed by the Revenue.

3. In the limitation petition it is noted that after receiving the Order Dated 12.7.2006 passed by the CESTAT under Annexure-7, wherein the Learned CESTAT has remanded the matter to the Learned Commissioner, Central Excise, Orissa, the Managing Director of the applicant-Company could not understand the implication/effect of the aforesaid remand order & not being conversant with the excise law & intricate question of law relating to appeal of enactment etc. It is further averred in paragraph-3 that all such records & documents were handed over to the Petitioner''s excise consultant for advice in the matter & requested for taking steps, if any, on the order of the Learned CESTAT. It is stated that the said excise consultant, in turn, kept silent over the matter & could not comprehend the consequences of the remand order of the Learned CESTAT.

4. The Revenue has objected to the limitation application & has stated that even

after order of remand by the CESTAT, personal hearing notices were issued to the Petitioner from the office of Commissioner, Central Excise, Custom & Service Tax, Bhubaneswar on 5.8.2008 & the Appellant went on appearing before the Commissioner & seeking adjournments for personal hearing from time to time & therefore he cannot be allowed to say that the Appellant was not aware of the consequences or implication of the order passed by the Tribunal. In this respect the Revenue placed reliance on the Judgment Hon''ble Supreme Court in the case of Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and Others, wherein the Hon''ble Supreme Court came to hold that "sufficient cause" is an expression which is found in various statutes & essentially means as adequate or enough. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. In the said case the explanation offered by the Appellant for the abnormal delay of nearly 20 months is that the Appellant concern was practically closed after 1998 & it was only opened for some short period. In the said case the Appellant had categorically accepted that on receipt of the order the same was immediately handed over to the consultant for filing of an appeal & if that is so, such plea that because of lack of experience in business there was delay does not stand to be reason.

5. In the case at hand, on perusing the plea advanced by the Appellant, the plea advanced is similar to the case dealt with by the Hon''ble Supreme Court & further this very order of the Tribunal was the subject matter of the challenge in the connected Writ Petition (civil) No. 17095 of 2008 which was filed before this Court on 21.11.2008 that to with a delay of more than two years. It is further a fact that the present appeal has been filed against the Order Dated 12.7.2006 of the Learned CESTAT remanding the matter back to the Commissioner, Central Excise, Bhubaneswar & the order having been complied with by the Commissioner having passed the final order upon remand which was also appealable under the Excise Act, the delay for filing an appeal against the order of the Tribunal dated 12.7.2006 cannot be condoned in such circumstances.

6. Accordingly, the OTAPL stands dismissed on the ground of delay/latches.

7. In view of the Judgment/order passed today in the present OTAPL, Misc. Case No. 1 of 2009 also stands dismissed.

L. Mohapatra, J.

I agree.

