(2022) 09 CAL CK 0041

In the Calcutta High Court

Case No : MAT No. 670 Of 2022, IA No. CAN 1, 2 Of 2022

M/S. Star Battery Limited — APPELLANT

Vs

Joint Commissioner, Central Excise, Kolkat IV And Ors. — RESPONDENT

Date of Decision : 08-09-2022

Acts Referred:

Citation : (2022) 09 CAL CK 0041

Hon'ble Judges : T.S. Sivagnanam, J;Supratim Bhattacharya, J

Bench : Division Bench

Advocate : Anil Kumar Dugar, K.K. Maity, Tapan Bhanja

Final Decision : Allowed

Judgement

T.S. Sivagnanam J

1) There is delay of 2864 days in filing the appeal. The learned advocate appearing for the respondents has strenuously opposed the prayer for condonation of delay.

2) We have gone through the affidavit filed in support of the application for condonation of delay. Though several averments have been made but only one of such averments has appealed to us mainly that the counsel, who was engaged by the appellant to defend him and prosecute the matter, has passed away. This submission cannot be doubted. That apart the order, which was impugned in the writ petition, was an assessment order passed under the Central Excise Act, 1944 demanding Central Excise dues of Rs.18,62,403/- from the appellant. Though such order came to be passed on 25.02.2011, till date the department is unable to recover the same as nothing is on record to indicate that recovery proceeding was initiated. This is probably because the appellant ran into financial difficulties and proceeding under SARFAESI Act, 2002 is set to have been initiated against him. Thus, considering the totality of the circumstances this Court is of the view that ends of justice would be made if delay in filing the appeal is condoned. Accordingly, CAN 2 of 2022 is allowed and delay is condoned.

3) This intra-Court appeal is directed against the order dated 31.03.2014 dismissing WP 31450 (W) of 2013 filed by the appellant on the ground that the Court has got no power to direct the statutory appellate authority to entertain an appeal beyond the period of limitation prescribed under the Act. The learned Single Bench has noted the decision in the case of M/s. Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur, reported in 2008 (221) E.L.T. 163 (S.C.). The aofrementioned legal position is a settled legal position and the learned Single Judge was perfectly right in not granting relief sought for by the appellant. However, we are of the view, a party should not be left remediless. No doubt the conduct of the party needs to be considered, which in our view, can be given a liberal approach, more particularly, when the appellant had suffered an order in the hands of the appellate authority on the ground that the appeal was barred by time and before the learned Writ Court on the technical ground that the limitation for preferring an appeal cannot be extended. However, as against the order passed by the first Appellate Authority an appellate remedy is available before the Custom Excise Service Appellate Tribunal (for short "Tribunal"). Since the Tribunal is the last fact finding forum in the hierarchy of authorities, we are of the view that the appellant can be granted liberty to file an appeal before the Tribunal subject to certain conditions.

4) Accordingly, MAT 670 of 2022 is allowed in part and the order passed by the learned Single Judge is modified with the direction directing to the appellant to pay 25% of the due demand of Central Excise within a period of six weeks from the date of receipt of the server copy of this order. If such payment is effected then the appellant shall be entitled to file a statutory appeal before the learned Tribunal along with an application for condonation of delay which the learned Tribunal can consider by adopting liberal approach so that the matter can be decided on merits and in accordance with law. Consequently, CAN 1 of 2022 is disposed of.

5) Viewing the matter from the perspective of the revenue it would protect the interest of the revenue if an order is passed on merits of the matter since the order passed by the original authority in the year 2011 is continued to remain as a paper order till date. The appellant shall file an appeal before the Tribunal within fifteen days from the date of paying 25% of the demand in terms of the above direction.

6) It is made clear that the above direction has been passed considering the peculiar facts and circumstances of the case, more particularly, because the learned advocate representing the appellant had passed away. This order shall never be treated as a precedent in any other matter.

7) Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

