(2014) 05 BOM CK 0029

In the Bombay High Court

Case No : Central Excise Appeal No. 19 of 2013

Neelikon Foods Dyes and Chemicals Ltd. APPELLANT

Vs

Commr. of Central Excise RESPONDENT

Date of Decision : 07-05-2014

Acts Referred:

Citation : (2014) 305 ELT 221

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : Prakash Shah and Jas Sanghavi i/by PDS Legal, Advocate for the Appellant; S.I. Shah and Suchitra Kamble, Advocate for the Respondent

Judgement

1. This appeal challenges the order passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai, on 6th September, 2012. That order dismisses the application seeking condonation of delay of 168 days in filing of the appeal. After perusing the order passed by the Tribunal, we are of the opinion that the appeal raises a substantial question of law. It is accordingly admitted on the following substantial question of law:-

(a) Whether in the facts and circumstances of the case, the Customs, Excise and Service Tax Appellate Tribunal was right in not condoning the delay of 168 days in filing the appeal before it particularly in view of the fact that in the appellant''s own case involving the same issue, the appeal was admitted and unconditional stay was granted?

2. With the consent of the learned advocates, we have taken up the appeal for final hearing. We have perused the application seeking condonation of delay. In that application the applicant had pointed out to the Tribunal the facts and circumstances as to how the delay occurred. The same was also accompanied by an affidavit.

3. The reason assigned by the deponent of the said affidavit and equally noted by the Tribunal is that the delay has not occurred intentionally. The appellant had

pointed out that there was an appeal filed in relation to an identical controversy. That appeal was admitted by the Tribunal. The Tribunal has also granted unconditional stay in that matter. The Tribunal, therefore, was of the opinion that this was not a case where the appellant was negligent. The conduct of the appellant also is not such as would demonstrate utter negligence or lack of bona fide. It is in these circumstances that the Tribunal should have condoned the delay. The reasons assigned by the deponent of the affidavit Mr. V.K. Shetty son of Kariyanna Shetty are that he is practicing as a consultant for the past more than 17 years. The present appellant entrusted to him the papers and proceedings. The file containing the original order and related documents were handed over to this consultant in the first week of December, 2011. The file was misplaced in the office of the consultant with the couple of more files of other clients due to shifting of office and extensive renovation work thereafter. It is in these circumstances that the consultant has admitted the lapses on his part. We are of the opinion that, for such reasons the delay should have been condoned. These are not matters where the appellants have any control. The lapse or negligence on the part of the consultant should not visit the appellant with dismissal of the appeal.

4. The insistence of the Tribunal that if the consultant was handed over the papers in the first week of December, 2011, then the delay in filing of the appeal by the consultant should have been explained, particularly, because the appeal was filed only in June, 2012. We are of the view that the finding of the Tribunal is hyper-technical. It is unmindful of the settled legal principles that a liberal view should be taken and the delay deserves to be condoned if the litigant is not negligent, callous or his conduct demonstrates that he is not acting bona fide.

5. For the aforesaid reasons, we are of the opinion that the delay in filing the appeal deserves to be condoned. The impugned order is, therefore, quashed and set aside. However, in the circumstances, we impose cost on the appellant quantified at Rs. 10,000/-. The cost be paid within a period of four weeks to the respondent.