(2015) 09 MAD CK 0090

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1934 of 2015 and M.P. No. 1 of 2015

OSA Shipping Pvt. Ltd. APPELLANT

Vs

Commissioner of C. Ex., Chennai RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G

Citation : (2015) 325 ELT 486

Hon'ble Judges : V. Ramasubramanian and K. Ravichandra Babu, JJ.

Bench : Division Bench

Advocate : R. Lakshmi Ratan, for the Appellant; A.P. SrinivasAdvocatePanel Counsel, for the Respondent

Judgement

V. Ramasubramanian, J.—This appeal, is filed by the assessee, under Section 35G of the Central Excise Act, 1944 challenging the order of Customs, Excise and Service Tax Appellate Tribunal [CESTAT] refusing to condone the delay in filing the appeal. Heard Mr. R. Lakshmi Ratan, learned counsel for the appellant and Mr. A.P. Srinivas, learned Senior Panel Counsel for the first respondent.

2. It is the case of the appellant that as against the Order-in-Original dated 19-2-2009, it filed an appeal before the Commissioner of Central Excise in Appeal No. 163 of 2009. The First Appellate Authority dismissed the appeal by an order dated 15-12-2009. As against the said order, the appellant ought to have filed a further appeal to the CESTAT within three months. But, on the ground that the copy of the order passed in appeal was not received by them, the appellant applied on 13-12-2011 for a certified copy of the order. The certified copy was provided on 12-1-2012. Immediately, the appellant filed an appeal before the Tribunal on 3-2-2012 with an application to condone the delay. The application was rejected by the Tribunal forcing the appellant to come up with the above appeal under Section 35G of the Act.

3. The specific case of the appellant is that they had not received the Order-in-Appeal dated 15-12-2009. The fact that the appellant applied on 13-12-2011 for

a certified copy, the fact that they were provided with a copy on 12-1-2012 and the fact that they filed the appeal before the Tribunal on 3-2-2012 are not in dispute.

4. But the case of the Department is that the copy of the order was sent by registered post and hence it is deemed to have been received by the appellant.

5. But, unfortunately, the Tribunal failed to take note of the fact that the Revenue also did not produce the acknowledgment card. The appellant has admittedly paid a sum of Rs. 15,00,000/- out of the total demand of tax to the extent of about Rs. 27,00,000/-. Therefore, the appellant does not stand to gain anything by delaying the filing of the appeal before the Tribunal, after having paid more than 50% of the demand.

6. These are all cases, in which, contentious issue both on merits as well as with regard to the reason for the delay are raised. In such cases, entertaining an appeal by condoning the delay, especially, when more than 50% of the tax demand has been paid, would be the appropriate solution. Therefore, the Civil Miscellaneous Appeal is allowed. The order of the Tribunal is set aside. The Tribunal is directed to take up the appeal for disposal and dispose of it on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

