

(2010) 01 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 32862 of 2009

Praxair India Pvt. Ltd.

APPELLANT

Vs

Commissioner of C. Ex. and S.T.

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Finance Act, 1994 — Section 83, 86

Citation : (2010) 18 STR 257 : (2010) 28 STT 287 : (2010) 30 VST 641

Hon'ble Judges : N. Ananda, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Shwetha, for Murali and Co, for the Appellant;

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition by an assessee under the Finance Act, 1994, directed against the order dated 25-6-2009 [copy at Annexure-G] passed in Appeal No. ST/496/08 by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore.

2. Under the impugned order, the Tribunal dismissed an application for condoning delay of about 229 days in preferring the appeal, an appeal against the order in original passed by the Commissioner in terms of order dated 15-10-2007 [copy at Annexure-D] for getting over levy of tax under the provisions of the Finance Act, 1994.

3. The writ petitioner had sought to explain the considerable delay in preferring the appeal before the Tribunal, an appeal u/s 86 of the Finance Act, 1994, by urging that the delay was attributable to the fact that the adjudication order of the Commissioner had been served on one Priyaranjan at the branch of the petitioner's establishment at Jamshedpur and had been engaged through one GSS (Global Supply System) on contract basis; that the services of said Priyaranjan had come to an end as on 21-6-2008; that the current whereabouts

of said person are not known to the Petitioner and a copy of the adjudication order said to have been served by the department on said Priyaranjan was not to the knowledge of the petitioner-company and therefore when the petitioner-company learnt about the demand pursuant to the impugned order of the commissioner, it had made arrangements to secure the certified copy of the order and thereafter had preferred the appeal; that the delay was in such bona fide circumstance and should be condoned and the appeal be entertained on merits.

4. The petitioner-company had also disputed the very service of the notice of the passing of the order and the order itself on the petitioner-company as, according to the petitioner, the service of notice of the passing of the order and the order on said Priyaranjan is not a proper/sufficient service on the petitioner-company and at any rate the order was not within the knowledge of the petitioner-company and in the circumstance the Tribunal should have condoned the delay and the appeal should have been entertained on merits.

5. The Tribunal, which looked into the explanation offered in the affidavit accompanying the application seeking for condonation of delay, found that there is no denial on the part of the petitioner-company about the service of order upon a person who was in charge of the work and affairs of the company, though hired on contract basis, and the acknowledgement of receipt by the said person at the Jamshedpur plant of the petitioner-company being a matter on record, as per the records of the Department and being of the view that as to in what manner the petitioner-company carries on its business is its own concern, the explanation did not constitute sufficient ground to condone the delay and therefore found no merit in the application for condoning the delay and accordingly dismissed the application and consequently dismissed the appeal also.

6. It is aggrieved by this order of the Tribunal, the present writ petition under Article 227 of the Constitution of India.

7. Succession of lawyers have appeared for the petitioner in this case only to seek for adjournment on the premise that a senior counsel will have to come and argue the matter. The third in the series of such lawyers appearing for the petitioner-company, Ms. Shwetha, has taken us through the order of the tribunal, memorandum of appeal.

8. We have perused the order impugned in this appeal and considered grounds urged in the writ petition.

9. If the Tribunal had exercised its discretion to appreciate the explanation offered by the petitioner-company in its appeal before the Tribunal for condoning the delay and found there was not sufficient cause made out by the petitioner and had consequently dismissed the application seeking for condonation of delay and as a sequel of the dismissal of the application and also the appeal. We do not find any illegality in the order of the Tribunal. The Tribunal is justified in observing as to in what manner the petitioner-company runs its business is its

own concern and that cannot be accepted as a legitimate or bona fide reason for seeking a delay of 229 days in preferring the appeal.

10. That apart, though it is sought to be urged that the petitioner-company was genuinely ignorant of the order of the commissioner having come into existence, as the said Priyaranjan was on contract basis in the services of the petitioner-company and he left the job and his whereabouts were not known and such circumstances is sought to be urged as a factor which should have been taken into consideration, to condone the delay and to entertain the appeal and though it is also urged by Ms. Shwetha, learned Counsel for the petitioner that pendency of similar matters before the Tribunal involving the very question is another ground, because of which the delay application should have been ordered in favour of the petitioner-company, we find that it is not the same as to hold that the Tribunal has committed an illegality in passing the impugned order and also to hold that the Tribunal should have condoned the delay, warranting interference in writ jurisdiction. If the Tribunal has exercised its discretion for the purpose of condoning the delay in preferring an appeal and on taking into consideration the explanation offered by the petitioner/appellant and consciously holds that a case for condonation is not made out, which conclusion even in an view is not an unreasonable conclusion then in a matter like this we are very clear that in the exercise of an jurisdiction under Articles 226 and 227 of the Constitution of India, such an order cannot be quashed or set aside.

11. This apart, in relation to the order of the Tribunal, an appeal lies to this Court in terms of Section 35 of the Central Excise Act, 1944 coupled with Section 83 of the Finance Act.

12. It is well settled proposition of law that when there is an appellate provision to appeal to this Court under any statutory provisions in respect of the very subject matter, seldom a writ petition is entertained and for this reason also, there is no ground or justification to entertain this writ petition. It is however, left open to the petitioner company to avail of such statutory remedy, as may be open to it in the circumstance.

13. Writ petition is dismissed.