(2014) 07 KL CK 0201

In the High Court Of Kerala

Case No : C.E. Appeal No. 8 of 2014

Punalur Paper Mills Ltd. APPELLANT

Vs

Commissioner of C. Ex. and Cus. RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Citation : (2014) 310 ELT 279

Hon'ble Judges : T.R. Ramachandran Nair, J;P.V. Asha, J

Bench : Division Bench

Advocate : Joseph Kodianthara, Sr, Advocate, V. Abraham Markos, Binu Mathew, Tom Thomas, Abraham Joseph Markas and Abraham Varghese Tharakan, Advocate for the Appellant; Ranjith Jacob Koshy and Thomas Mathew Nellimoottil, SCs, Advocate for the Respondent

Judgement

T.R. Ramachandran Nair, J.—This appeal is filed against Annexure L order passed by the 2nd respondent Tribunal. Essentially it is a case where an application for restoration of the appeal after making the pre-deposit was not allowed by the Tribunal by holding the view that it was filed after about 16 years. We heard the learned senior counsel for the appellant Sri Joseph Kodianthara and the learned Standing Counsel for the Department Sri Ranjith Jacob Koshy.

2. The applicant is a Public Ltd. Company which manages a factory at Punalur manufacturing paper. Annexure A is the order by which the first respondent''s predecessor confirmed Central Excise Duty demand of Rs. 67,36,577/- and an amount of Rs. 6,70,000/- was levied as penalty. Penalty was also imposed against the Directors at Rs. 10,000/- each. An appeal was filed wherein by order dated 4-11-1996 (Annexure B) stay was granted on condition of making a deposit of Rs. 7 lakhs on or before 31-5-1993. For not making the deposit, the appeal was dismissed as per Annexure C order.

3. Thereafter the appellant preferred a writ petition against the dismissal of the appeal and the writ petition also did not go in favour of the appellant and finally the writ appeal was also dismissed as evident from Annexure D judgment dated

24-9-2002. The order under challenge therein was only the final one dismissing the appeal.

4. Following are the relevant facts giving a picture of the affairs of the Company in paragraph 5 of the appeal memorandum:

The company was established in the year 1888 as a joint stock company registered under the Travancore Companies Regulation Act. It is averred that during the period in question the entire property of the appellant came under Court Receiver''s Custody pursuant to loan recovery proceedings by the ICICI Bank. Over 1000 employees were employed there directly and after the new industrial policy by the State, a MOU was signed as per Annexure C by the appellant on 2-5-2002. It is averred that labour settlements were also thereafter entered by and between the new management and the representatives of the Employees Union on 20-11-2008. They were negotiating with the various financial institutions and banks for one time settlement. It is pointed out that an amount of Rs. 8 crores was paid by the new management to the financial institutions and banks in full and final settlement and the Court Receiver was discharged from the assets of the appellant on 24-4-2010. Thereafter the present promoters signed a Share Purchase Agreement as per Annexure F. The inaugural function of the factory was organized on 20-8-2010 and a sum of Rs. 207 lakhs was remitted towards sales tax arrears and a fresh MOU was signed with the Government. It is evident from Annexure G. The appellant has also given the details of payments to various functionaries. An amount of Rs. 94,82,052/- was remitted towards arrears to the Kerala State Electricity Board on 2-9-2011. Rs. 700 lakhs was paid towards employees'' dues during the period from 20-8-2010 to 31-12-2011 which had arisen since 1982. It is also stated that nearly Rs. 10 crores has been expended by the present promoters for revamping work of one machine. After the financial set up has improved and the company restarted, they made a pre-deposit as evident from Annexure H on 28-3-2012. Annexure I is the application submitted before the Tribunal for restoration of the appeal. The apparent view taken by the Tribunal is that the delay being of 16 years, there is no reason to restore the appeal.

5. The learned Senior Counsel for the appellant submitted that the facts explained by the appellant in the memorandum of appeal will show that the Company was being under Court Receiver for a long time from 1993 to 2010. The affairs of the Company has been revived by the present management and various payments have been effected. It is submitted that Section 35C of the Act confers wide power to restore the appeal and the appeal happened to be dismissed only because the pre-deposit was not made.

6. The learned Standing Counsel for the Department submitted that the order passed by the Tribunal is justified in the light of the fact that the appellant did not take care to make the pre-deposit within a reasonable time even after the dismissal of the appeal and the delay being that of 16 years, no indulgence need be shown to the appellant.

7. In the counter affidavit filed on behalf of the first respondent also these contentions have been raised.

8. Of course, there is a delay of 16 years in filing the application for restoration. The Apex Court in Kirtikumar Jawaharlal Shah Vs. Union of India (UOI), , which is relied upon by the learned Senior counsel for the appellant, after considering the fact that the deposit has been made, restored the appeal before the Tribunal. Various facts are stated in paragraph 2 of the judgment and finally in paragraph 3, their Lordship has held as follows:

"3. We are informed that now the appellant has deposited Rs. 9 lakhs. Learned counsel for the appellant has filed additional documents. He has filed a Certificate dated 1-10-2012 issued by the Superintendent, Office of the Superintendent, Central Excise, Customs & Service Tax, Range - GONDIA. This certificate states that the appellant has deposited an amount of Rs. 9 lakhs on 1-10-2012. In view of this, it is clear that the appellant has deposited an additional amount of Rs. 9 lakhs. Thus, a total amount of Rs. 18 lakhs has been deposited by the appellant."

In the said case the entire amount ordered was not paid and the appeal was dismissed.

9. The learned Senior counsel for the appellant is well justified in relying upon the said judgment.

10. We have considered the rival submissions. We are of the view that when there cannot be any dispute regarding the financial constraints of the appellant, that resulted in the inability of the appellant to make the deposit, the question is only whether the reasons pointed out by the appellant in seeking restoration are justified or not. It is informed by the learned senior counsel for the appellant that during the entire period the department has also not taken any step to enforce the liability as against the appellant. This shows that apparently the financial difficulty of the Company was a matter within the knowledge of the Department also. Therefore, when there cannot be any dispute with regard to the sufficiency of the reasons and when there is ample power for the Tribunal to restore the appeal, merely because there happened to be a delay of 16 years, the application should not have been rejected. The delay has been explained in detail in Annexure I. The Company which was functioning from 1888 went into red sometime in early 1990''s and now the appellant herein has entered into a MOU with the State Government also and it has revived its affairs.

11. In that view of the matter, we find that the appeal could have been restored and disposed of on merits. It is also informed that an appeal with respect to similar liability for a different period has already been allowed and it has not been challenged by the Department. We are not going into those aspects. Accordingly, the appeal is allowed and the impugned order passed by the Tribunal is set aside. The appeal will stand restored and will be disposed of on merits after hearing both sides. No costs.

