
(2014) 11 MAD CK 0471

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 3010 of 2014

Texcel International Pvt. Ltd.

APPELLANT

Vs

The Customs, Excise and Service Tax Appellate Tribunal

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Citation : (2015) 317 ELT 26

Hon'ble Judges : R. Sudhakar, J; Pushpa Sathyanarayana, J

Bench : Division Bench

Judgement

R. Sudhakar, J.—This Civil Miscellaneous Appeal is filed by the appellant as against the order of the Customs, Excise and Service Tax Appellate Tribunal dated 04.04.2014 made in Final Order No. 40262/2014.

2. The appellant is engaged in the manufacturing of SG & Grey Iron castings falling under Chapter sub-heading 73251000 of the first schedule to the Central Excise Tariff Act, 1985. They are clearing the goods manufactured by them under self-assessment and self-removal procedure. Alleging contravention of the provisions of sub-Rule 3A of Rule 8 of the Central Excise Rules, 2002, show cause notice was issued to the assessee demanding payment of duty for the clearances made during the period from 5th April 2010 to 26th August, 2010 and from 6th October 2010 to 31.12.2010. After considering the response filed by the appellant, the Adjudicating Authority passed an order confirming the proposal for demand of duty and also levied penalty. Aggrieved by the said order of the Adjudicating Authority, the appellant preferred an appeal before the Commissioner (Appeals), who confirmed the order of the Adjudicating Authority, thereby dismissed the appeal. Aggrieved by the same, the appellant preferred further appeal before the Tribunal along with an application to condone the delay of 73 days.

3. The Tribunal dismissed the appeal filed along with an application to condone the delay of 73 days holding that it is not a case of misplacement of order, but it is a clear case of gross negligence and inaction on the part of the appellant and

therefore, the delay should not be condoned. As against the said order of the Tribunal, the appellant is before us.

4. Heard learned counsel appearing for the appellant and the learned standing counsel appearing for the Department and perused the materials placed before this Court.

5. It is seen that the order that the appellant suffered is in relation to the wrong availment of cenvat credit for the clearances made between 5th April, 2010 and 26th August, 2010 and from 6th October 2010 to 31.10.2010. According to the Department, the duty should have been paid in cash and the cenvat credit should not have been utilised. The assessee strongly contends that the clearances made using cenvat credit is in order and challenging the original order, an appeal was filed before the Commissioner (Appeals), who held against the appellant. In the course of the proceedings before the Commissioner (Appeals), it appears one M.Ramakrishnan, Senior Manager appeared for personal hearing on 28.8.2012. Prior to that, he submitted his request for being relieved from service on 22.6.2012. In view of the on going proceeding, it appears that he was not relieved, but subsequently, relieved on 19.2.2013. In the meanwhile, the order in appeal came to be passed and was served on the assessee on 16.10.2012 and the further appeal to the Tribunal was not filed in time.

6. The facts that the personal reasons attributed to the stress undergone by Sri.Ramakrishnan, who was in incharge of the case and the fact that he has submitted a letter of resignation earlier to the proceedings before the Commissioner (Appeals) and was relieved subsequently on 19.2.2013 are not in dispute. Therefore, the appellant's plea that there was good reason for not filing the appeal for the aforesaid reason appears to be a bona fide reason. Further more, the appellant has been continuously pursuing his matter before the Adjudicating Authority as well as before the Commissioner (Appeals). The same is borne out by records and the appellant's plea is bona fide. In our considered opinion, the same would constitute "sufficient cause" for not presenting the appeal within the prescribed period.

7. The above said view of this Court is fortified by the decision of the Supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , wherein it has been held as under:

"The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts.

....

When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-

deliberate delay."

8. Taking note of the above-said decision of the Supreme Court, we are inclined to condone the delay. Accordingly, the order of the Tribunal stands set aside and the delay stands condoned. The Tribunal is directed to take up the appeal and dispose of the same on merits.

9. In the result, this Civil Miscellaneous Appeal is allowed. No costs.