

In the High Court of Judicature at Madras

Dated : 29.2.2016

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice N.KIRUBAKARAN

Civil Miscellaneous Appeal Nos.281 to 284 & 399 to 420 of 2016
CMP.Nos.2331 to 2333 & 3027 to 3048 of 2016

CMA.No.281 of 2016 :

The Commissioner of Central Excise,
Cehnnai I Commissionerate,
Chennai-34.

...Appellant

Vs

1.Mr.B.S.Garg

2.The Customs, Excise and Service Tax
Appellate Tribunal, Chennai-6.

...Respondents

For Appellant in all the CMAs : Mr.Rajnish Pathiyil, CGSC

COMMON JUDGMENT

(Judgment was delivered by V.RAMASUBRAMANIAN,J)

These appeals, filed by the Commissioner of Central Excise under Section 35G of the Central Excise Act, 1944, arise out of the common order passed by the Customs, Excise and Service Tax Appellate Tribunal refusing to condone the delay of more than 2200 days in filing the appeals before the Tribunal.

2. Heard Mr.Rajnish Pathiyil, learned Central Government Standing Counsel for the Department.

3. These appeals arise out of three sets of cases. In one set of cases, a proprietary concern by name M/s.Indian Steel and Allied Products, Chennai, its sole proprietor B.S.Garg, a broker, who arranged for selling their goods and two persons, who sold the goods under invoices, became the noticees. In the second set of cases, a partnership firm by name M/s.Goyal Ispat Udyog, which now appear to have been converted into a proprietary concern, was the main noticee. Its proprietor Sriram Goyal, four brokers of the proprietary concern and several persons, who issued bills for selling goods, were made noticees in the second set of cases. In the third set of cases, a partnership firm by name M/s.Indira Ispat Udyog was the main noticee. Two of its partners were the other noticees. Three brokers and about 6 persons, who issued bills, were made co-noticees.

4. Show cause notices were actually issued in all the three sets of cases way back on 2.6.1999. The notices resulted in Orders in Original being passed on 27.4.2004. As against the Orders in Original, the Department filed only three main appeals in E/380/2005 as against M/s.Indian Steel and Allied Products, E/436/2005 as against M/s.Goyal Ispat Udhog and E/483/2005 as against M/s.Indira Ispat Udyog. These appeals, filed in the year 2005, came up for final hearing in the year 2012.

5. In the course of arguments of the appeals, taken up in 2012, the Special Counsel for the Department seems to have realised that the proprietor/partner as well as brokers and persons, who issued bills, were left out and appeals against the dropping of proceedings against them had been omitted to have been filed. Therefore, with a huge delay of 2249 days, the Department filed fresh appeals against the partners/proprietors/brokers as well as persons, who issued the bills.

6. In a very brief common affidavit filed in support of the applications for condonation of delay, the Department claimed that the appeals were filed with a delay upon the advice of the Special Counsel. The applications for condonation of delay comprised of seven paragraphs. Paragraphs 5 and 6 alone sought to project the semblance of a reason, which is actually an apology of a reason for condonation of delay. These paragraphs read as follows :

"5. Based on the directions of the Board, a single appeal was filed inadvertently naming M/s. Indian Steel and Allied Products, Chennai-57 as the only respondent vide appeal No.E/380/2005 before the Hon'ble CESTAT, Chennai.

6. The Registry accepted the appeal on 16.5.2005. However, the Special Counsel appearing on behalf of the Department, directed the Department to file an appeal making all the other noticees, on whom penalty under Rule 209A of the Central Excise Rules, 1994 was proposed in

the show cause notice, along with condonation of delay."

7. Shocked at the enormous delay and the lack of any justification for condonation of the same, the Tribunal dismissed the applications for condonation of delay. As against the order dismissing the applications for condonation of delay, the Department has come up with these appeals.

8. The main concern of the Department appears to be that if proprietors/partners/brokers as well as those, who issued bills for selling goods, are left out, the main appeals, filed by the Department against the manufacturer, may also fail.

9. But, this concern of the Department is wholly unjustified. The partners/proprietors/brokers as well as those, who issued bills, have been slapped with a fine. The fines slapped upon them were on the basis that the manufacturer had been found guilty. Therefore, if the Department had chosen to file appeals only as against the individuals, but not against the manufacturer, such appeals would certainly fail. But, if the Department had filed main appeals against the manufacturers, but left out the individuals, the appeals filed against the manufacturers will not certainly fail on this score. Hence, the concern of the Department is actually illusory.

10. The main ground of attack to the impugned orders is that even if ultimately the Department succeeds in their appeals against the manufacturers, those orders may have to be implemented only as against partners/proprietors. Therefore, the Department feels that the appeals

against the individuals should also be entertained.

11. But, we do not think so. If the Department succeeds in the main appeals as against the manufacturers, the orders can be certainly enforced against proprietors/partners. The liability of a partnership firm is that of the partners. The liability of the proprietary concern is that of the proprietor. Hence, the failure of the Department to file appeals as against the individuals, will not certainly have a bearing upon the main appeals, which were filed in time in the year 2005.

12. We have already extracted the relevant portions of the common affidavit in support of the applications for condonation of delay. There is hardly any reason for the long delay. Therefore, the Tribunal was justified in refusing to condone the delay. No substantial question of law arises for our consideration in the above appeals. Hence, in a matter that arose out of the show cause notices issued in 1999, which resulted in Orders in Original passed in 2004, we do not propose to entertain these appeals.

13. Accordingly, the civil miscellaneous appeals are dismissed. Consequently, the above CMPs are also dismissed.

29.2.2016

Internet : Yes

RS

V.RAMASUBRAMANIAN,J
AND
N.KIRUBAKARAN,J

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