CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 51845 of 2017 with
Service Tax CoD Application No. 50983 of 2017

(Arising out of Order-in-Original No. 41/PC/ST/BPL-ST/2016 dated 29.04.2016 passed by the Principal Commissioner of Customs, Central Excise & Service Tax, Bhopal)

DATE OF HEARING : 23.01.2018
DATE OF DECISION : 23.01.2018

M/s Sarvesh Builders & Developers ..... **Appellants**
(Rep. by Sh. Sandeep Mukherjee, CA)

VERSUS

CCE, Bhopal ..... **Respondent**
(Rep by Sh. Sanjay Jain, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 50340/2018

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the Order-in-Original No. 41/PC/ST/BPL-ST/2016 dated 29.04.2016 passed by the Principal Commissioner of Customs, Central Excise & Service Tax, Bhopal along with Condonation of Delay application for 475 days.

2. Heard Shri Sandeep Mukherjee, learned Chartered Accountant for the assessee-Appellants and Shri Sanjay Jain, learned DR for the Revenue.

3. The learned Chartered Accountant for the assessee-Appellants submits that the delay of 475 days in filing the appeal was due to paucity of funds and relied upon the ratio of the Hon'ble High Court of Gujarat at Ahmedabad in the case of **Shree Ganesh Construction Co. vs Union of India,** 2016 (340) ELT 131 (Guj). He also submits that the assessee-Appellants have already deposited the tax demand as per the show cause notice. Lastly, he made a request to admit the appeal by condoning the delay.

4. After hearing both sides and considering the totality of the facts and circumstances of the case, we are of the view that there is a delay of 475 days in filing the appeal which cannot be condoned in the absence of plausible explanation. In the present case, no satisfactory explanation was given for condoning the inordinate delay of 475 days. Hence, the same cannot be condoned in view of the ratio laid down by the Punjab & Haryana High Court in the case of **Bindra Construction vs UOI** (2010) 321 ITR 321 P&B. Similarly, in the case of **K. Muthusamy Pillai vs UOI**, 174 ITR 636 (Mad.), it was held that the Tribunal has no power to condone the delay beyond 30 days. Moreover, in view of Section 5 of the Limitation Act, 1963, the Hon'ble Supreme Court in the case of **Calcutta Municipal Corporation vs Pawan K. Saraf & Anr.**, 1991(1) SC 39, has held that in the absence of proper explanation, delay could not be condoned.

5. In the result, the Condonation of Delay application is dismissed. The appeal also stands disposed of accordingly.

(Dictated & pronounced in the open court)

(JUSTICE DR. SATISH CHANDRA)
PRESIDENT

(V. PADMANABHAN)
MEMBER (TECHNICAL)

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