IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Service Tax COD Application No. 50666 of 2018
Service Tax Appeal No. 51940 of 2018

[Arising out of the Order-in-Appeal No. 252/AK/ST/JPR/2016 dated 20.07.2016, passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Jaipur (Raj)]

Gajner Property Trust **Appellants**

Vs.

CCE, Jodhpur **Respondent**

Appearance:

Shri O P Agarwal, CA for the Appellants
Shri R K Maji, AR for the Respondent

CORAM:

Hon'ble Mr. C L Mahar, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Date of Hearing/ Decision: 08.08.2018

FINAL ORDER No. 52810 /2018

Per Rachna Gupta:

Arguments for Condonation of delay in filing the appeal have been heard.

2. Shri OP Agarwal, Chartered Accountant for the appellant has submitted that copy of impugned order dated 20.7.16 was received on 27.7.16 and immediately thereafter it was handed over to their counsel Shri Paras Daga. He failed to pursue the matter. It is only

after a letter dated 25.1.2018 and subsequent letter dated 16.3.2018 from the department asking the applicant to deposit the dues that Shri Daga was again approached. But he expressed his inability to do further action in the matter. It is impressed upon and submitted by the Consultant that all this resulted into the delay in filing of present appeal. Learned Consultant has relied upon the decision of ***Overseas Air Travel & Tour Operators vs. CCE & ST, Cochin [2010 (17) STR 472 (Tr-Bang)]*** to impress upon that the assessee should not suffer for the mistake of counsel of the appellant and accordingly has prayed to allow the COD application and appeal be allowed to be accepted.

3. Shri R K Maji, learned DR has objected to the request stating that there has been delay of almost one and a half year and for delay of such a substantial period there should be cogent reason for condoning the delay which is absolutely missing in the present case. He made a prayer to dismiss the COD application.

4. After hearing both the sides, we are of the opinion that the rules of limitation are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly. In the present case, it is application for condoning the gap of more than an year for challenging the order. It is an admitted fact that despite the order was received on 27.7.16 and was handed over to the consultant for

further action (as mentioned) the appellant did not take any action till in January, 2018 i.e. till they have received notice from department for recovery of dues. There is no explanation for this long silence of the appellant himself nor there is any communication of the appellant with his consultant Shri Daga, pursuing his appeal to be filed in time.

5. In the given circumstances, we are not able to hold that there is apparent mistake on the part of the counsel for the said delay. Keeping in view, the said casual approach and substantial gap of one and half year, we do not find any justifiable reason to condone the delay.

6. The application in hand is therefore, dismissed, In the result, appeal also stands dismissed.

(dictated and pronounced in the open Court)

(C L Mahar)
Member (Technical)

(Rachna Gupta)
Member (Judicial)

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