CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Application No. ST/COD/30084/2017
in
Appeal No. ST/30109/2017

(Arising out of Order-in-Appeal No. GUN-EXCUS-000-APP-061-16-17 dated 27.07.2016 passed by Commissioner of Customs, Central Excise and Service Tax, (Vizag Appeal-II), Guntur)

Divisional Electrical Engineer Operation …..Appellant(s)

Vs.

Commissioner of Customs, Central Excise and Service Tax, Guntur …..Respondent(s)

Appearance
Ms. Siri Reddy, Advocate for the Appellant.
Shri Guna Ranjan, Superintendent (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 11/05/2018
Date of Decision: 11/05/2018

FINAL ORDER No. A/30572/2018

[Order per: M.V. Ravindran]

This application is filed for condonation of delay of 53 days in filing the appeal before the Tribunal.

2. We find that the justification given by the applicant is acceptable; suffice to say that applicant being a Divisional Electrical Engineer in State Government, should have been more diligent in filing the appeal in time, we condone the delay and direct the registry to take the appeal on record.

3. At this juncture, Learned Counsel submits that identical issue of the very same appellant has been remanded back to the Adjudicating Authority vide Final Order No. A/30284-30328/2018 dated 22.02.2018. She produces the said order of the Bench.

4. On perusal of said order, we do find that similar issue has been disposed of by this Bench to the Adjudicating Authority to reconsider the issue afresh.

5. Learned Departmental Representative submits that the issue is identical. Since the issue involved in this case being identical in earlier proceedings of the appellant and is remanded back to the Adjudicating Authority, no useful purpose will be served in keeping this appeal pending before the Tribunal. Accordingly, appeal is taken up for disposal.

6. In Final Order dated 22.02.2018, we remanded the matters back to the Adjudicating Authority by recording the following:

> ***4.*** *It would, therefore, appeal from the rival arguments that the entire issue can be resolved by a scrutiny of documentary evidence for ascertainment of claim of appellant that they had not retained the tax collected from its customers. In these circumstances, the appropriate course of action would be to set aside the impugned orders and remit the dispute back to the original authority who, in accordance with the principles of natural justice, would afford an opportunity to the appellant to submit all relevant evidence each of which shall be scrutinized and decided thereupon. Appellants are at liberty to submit any other documents that may assist in such scrutiny.*
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> ***5.*** *On the above terms, we dispose of these appeals keeping all issues open for resolution by the original authorities.*

The same observation would apply in the case in hand, accordingly, the impugned order is set aside, and the matter is remanded back to the Original Authority to reconsider the issue afresh after following the principles of natural justice with liberty to appellants to produce any documents on which they wish to rely upon in support of their contentions.

7. Accordingly, application for condonation of delay is allowed and appeal stands disposed of by way of remand.

(Order dictated & pronounced in open court)

P. VENKATA SUBBA RAO	**M.V. RAVINDRAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Lakshmi….