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

Application No. ST/COD/30107/2017
in
Appeal No. ST/30152/2017

Kalathil Brothers Construction Company Private Limited …..**Appellant(s)**

Vs.

Commissioner of Central Excise, Service Tax and Customs, Visakhapatnam – ii …..**Respondent(s)**

Appearance
Shri P. Rama Krishna, 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: 30/05/2018
Date of Decision: 30/05/2018

FINAL ORDER No. ________________

[Order per: M.V. Ravindran]

This application is filed for condonation of delay of 1434 days in filing the appeal before the Tribunal.

2. Learned Counsel appearing for the applicant and submits that the Order-in-Original No. 04/2013 – Adj. (BVSNK) dated 01.02.2013 was received by the Accountant on 28.02.2013. It is his submission that the Accountant after receipt of the order, due to his

serious illness suffering from severe cervical spondylitis and arthritis and has been advised bed rest and treatment by the doctor since January, 2013 and December, 2013, again due to travelling and related stress and strain, he had under treatment during the period January, 2014 to August, 2014 he could to attend duties. As the matter pertained to the period from 2008 onwards, many of the records could not be traced. He draws our attention to the affidavit filed by the director of the appellant applicant stating the same facts. He further submits that in similar issue for the Period 2004-05, there was a delay in filing the appeal which was not condoned by the Tribunal and appellant preferred the appeal before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, Hyderabad which was disposed of by their Lordships on 21.08.2017 condoning the delay of 780 days in filing the appeal before the Tribunal. He produces the copy of the same and prays for condonation of delay in this appeal.

3. Learned Departmental Representative submits, the appellant has not properly explained the delay of 1434 days in the affidavit filed by the director; that the appellant has not enclosed/ evidenced the illness of their accountant; the appellant cannot state that they had only one person looks after the matters in respect of payment of taxation.

4. On careful consideration of submissions made, we find that the director of the company has explained the delay in an affidavit as follows:

GOVERNMENT OF KERALA
REVALIDATED TO
Rs.50
(FIFTY RUPEES)

00AA 482977

BEFORE THE HON'BLE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH,

AT: HYDERABAD

COD NO. ST/30107/2017
IN
APPEAL NO. ST/30152/2017

NOTARY
S. KUMARY
THIRUVANANTHAPURAM CORPORATION
Reg. No. 81/97/TVPM.
Date of Expiry: 10-03-2022
GOVT. OF KERALA

AFFIDAVIT

I, Venugopalan Velayudhan Nair, aged about 64 years, s/o. Velayudhan Nair, residing at Trivandrum, solemnly state and affirm as under:

1. I am the Director of the Petitioner's Company, M/s. Kalathil Brothers Construction Company Pvt. Ltd., Visakhapatnam as such well acquainted the facts of the case and I am authorized to depose the same.

S. KUMARY B.A; LLB
ADVOCATE & NOTARY
Vanchiyoor, Trivandrum
Mob: 9605899027

No 2568
26.5.18

Rs. 50/-
Venugopalan
KBCC Pvt Ltd

For Kalathil Brothers Construction Company Private Limited

Director

PRIYA S.NAIR
Stamp Vendor
Sasthamangalam

15 MAY 2018

2. I state that Mr. Shamsudhin M.P, authorized signatory of the appellant company, looks after matters pertaining to the accounts and payment of taxes went on leave for a longer period due to his serious illness suffering from severe cervical spondylitis and arthritis and has been advised bed rest and treatment by the doctor since January, 2013. There was a slight improvement in his health condition and he resumed duties for a short period during the second half of December, 2013. But due to traveling and related strain he was again under treatment from January, 2014 to August, 2014 during which period he could not attend duties. As the matter pertained to the period from 2008 onwards, many of the records could not be traced. Further, during the hudhud cyclone which hit Visakhapatnam in October, 2014 the authorized signatory sustained injuries as he fell from his motorcycle, and was again under treatment and bed rest.

3. I state that while so, the order-in-original received by him personally was lost and the matters also gone out of his memory. As no other employee was conversant with the matters relating to the payment of service tax and other matters relating to accounts, and as he alone could answer the queries from the counsel and provide the required information/documents, there was a delay in the preparation and filing of this appeal. It is only on 23rd January, 2017, the copy of order-in-original was found and noticed that we could not filed appeal against the said impugned order. I state that during the process there was a delay of 1434 days in filing the present appeal.

4. I state that in the similar facts and circumstances, in the Appellant's own case, the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, Hyderabad pleased to condone the delay in the filing the earlier appeal No. ST/20155/2015-DB, vide its CEA NO. 114 of 2017(copy enclosed).

For Kaiathil Brothers Construction Company Private Limited

Director

S. KUMARY B.A, LLB
ADVOCATE & NOTARY
Vanchiyoor, Trivandrum
Mob: 9605899027

NOTARY GOVT. OF KERALA
S. KUMARY
THIRUVANANTHAPURAM CORPORATION
Reg No. 81/97
Date of Expiry 10-03-2022

5. I state that the delay in filing the Appeal was on account of illness of the concerned person and misplacement of papers due to loss of memory and it is neither willful nor intentional.
6. In the facts and circumstances, I prayed that my company may not be penalized for the said unwarranted delay in filing the present Appeal.

For Kalathil Brothers Construction Company Private Limited

Executed on this 26th day of May, 2018

Director

(VENUGOPALAN VELAYUDHAN)

VERIFICATION

I, Venugopalan Velayudhan, Director of the Petitioner's Company, M/s. Kalathil Brothers Construction Company Pvt. Ltd., do hereby declare that what is stated above is true and correct to the best of my knowledge and belief.

For Kalathil Brothers Construction Company Private Limited

Verified today on the 26th day of May, 2018.

Director

DEPONENT

(VENUGOPALAN VELAYUDHAN)

Place: Trivandrum
Date: 26.05.2018

NOTARY S. KUMARY THIRUVANANTHAPURAM CORPORATION Reg. No. 81/97/TVPM. Date of Expiry: 10-03-2022 GOVT. OF KERALA

NOTARY S. KUMARY THIRUVANANTHAPURAM CORPORATION Reg. No. 81/97/TVPM. Date of Expiry: 10-03-2022 GOVT. OF KERALA

S. KUMARY B.A., LLB
ADVOCATE & NOTARY
Vanchiyoor, Trivandrum

5. We find that as to the fact that the Order-in-Original was received on 28.02.2013 by the self same Shri Shamsudhin as has been stated by the appellant applicant in condonation of delay correctly. Further, we find that the affidavit of the appellant's director is not evidencing the factual position of the treatment of Shri

Shamsudhin. In our view, appellant has considered filing of appeal belatedly as correct procedure, as it is seen, on similar issue in the First appeal filed by the appellant. Tribunal condoned the delay of 129 days and second appeal, on the same issue, delay of 413 days was condoned by their Lordships, and on the same issue, the appellant is seeking condonation of delay of 1434 days in filing the appeal before the Tribunal. In our view, the appellant was aware of the litigation he has been taking up with the Department on the self same issue from 2004-2005, should have been more diligent filing this appeal in time.

6. In view of the foregoing, the explanation given by the Learned Counsel for the appellant in the application for condonation of delay and affidavit in support thereof, are not acceptable, accordingly, we hold that the delay has not been properly justified. We have no hesitation to dismiss the application for condonation of delay in filing of appeal, consequently, appeal also stands dismissed.

(Order dictated & pronounced in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….