CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - DB
COURT - I

Application(s) Involved:

ST/COD/30499/2016 in ST/30568/2016-DB

G Mahesh Babu Appellant(s)

Versus

Commissioner of Central Excise,
Customs and Service Tax Respondent(s)
HYDERABAD-II

Appearance:
Shri S. Sankara Vadivelu, advocate for the Appellant.
Shri Dass Thavanam, 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: 06/06/2018
Date of Decision: 06/06/2018

Final Order No: A/30682/2018

[Order per: M.V.Ravindran.]

1. This application is filed for condonation of delay of 812 days in filing the appeal before the Tribunal.

2. The application for condonation of delay seeks the condonation of dealy on the following reasons:

> *"01. Shri G. Mahesh Babu, the applicant/appellant herein is filing an appeal against the Order-in-Appeal No.160/2013 dated 23.12.2013. The filing of appeal is delayed by 812 days. As I have filed an appeal before the Hon'ble CESTAT, Bangalore on 20.12.2013 against the Order-in-Stay Petitioner No.70/2013 (H-II) S.Tax dated 28.11.2013 passed by the Learned respondent authority in the same Appeal No.118/2013(H-II), pending before the authority, I was hoping that the Order-in-Appeal No.160/2013(H-II) ST dated 23.12.2013 would be heard together. Now, I have been advised by the counsel to file a separate appeal and pray for linking both the appeals. Accordingly, the present appeal is filed.*

> *02. The delay in filing of appeal may be condoned as I do not stand to gain by the delay in filing the appeal, as held by the Hon'ble Supreme Court in the case of Collector, Land Acquisition Anantnag and another Vs. MST. Katiji and others [1987(28) ELT 185 (S.C.)], as the applicant has a better case on merits."*

3. The above reproduced grounds are the only grounds which are taken in the application for condonation of delay. Learned Counsel appearing for the applicant draws our attention to the purported appeal filed by them before the Tribunal on 20.12.2013 against Stay Order No. 02/2013 (H-II) S.Tax dated 28.01.2013 passed by the first appellate authority directing the appellant herein to deposit the total tax demanded by the Order-in-Original. It is his submission that having preferred an appeal against the Stay Order before the Tribunal, which has not yet been disposed of, appellant was under the impression that the Order-in-Appeal dated 23.12.2013 will be taken up for disposal together. Learned Counsel brings to our notice that this submission was made before the first appellate authority as to there being an appeal pending against the Stay petition, despite that he proceeded to dismiss the appeal for non-compliance.

4. Learned DR submits that the first appellate authority was correct in dismissing the appeal for non-compliance and the reasoning given for seeking condonation of delay is not acceptable.

5. On careful consideration of the submissions made by both sides, we find that the claim of the applicant that they had filed an appeal before the Tribunal against the Order directing them to pre-deposit on 20.12.2013 seems to be not on the sound footing. It is seen from the records in the appeal memoranda, at page 22, that the appellant had filed an appeal against said rejection on 20.12.2013 but the same has not been allotted any appeal number, which would mean that there is no appeal pending before the Tribunal. It is pertinent to record that the Order in stay petition was passed by first appellate authority; there is no preamble to such Order,

directing/instructing the appellant, that they can file an appeal against the said order. In the absence of any preamble giving direction for an appeal against the stay order, appellant *suo moto* filing an appeal (which is not numbered and accepted by the Tribunal) and pendency thereof (as claimed by counsel) cannot be considered as a justifiable reason for seeking condonation of delay. Another argument made by the Learned Counsel that the appellant was under the bonafide impression that their appeal against the Order directing them to pre-deposit is pending and they were in regular correspondence with the Tribunal, will also not carry their case further for the reason cited by us herein before. In the absence of any justifiable reason seeking condonation of delay of substantial period of 812 days, we find that the application needs to be dismissed and we do so.

6. COD application stands dismissed. Consequently, the appeal also stands dismissed.

(Order pronounced and dictated in open court)

P. Venkata Subba Rao
MEMBER (TECHNICAL)

M.V.Ravindran
MEMBER (JUDICIAL)

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