CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH – COURT NO.1

Application No.E/COD/85109/2019 in Appeal No.E/85295/2019

[Arising out of Order-in- Appeal No.NGP/EXCUS/000/APPL/504-508/16-17, dt.09.01.2017, passed by the Commissioner (Appeals), CE & C, Nagpur]

M/s Jai Laxmi Casting & Alloys P. Ltd **......Appellant**
Gut No.74 & 75, Village: Farola,
Tal.: Paithan, Dist: Aurangabad
Maharashtra 431 107

VERSUS

CCE & ST, **......Respondent**
P.B. No.81, Civil Lines, Telangkhedi Road,
Nagpur 440 001

WITH

Application No.E/85167/2019 in Appeal No.E/85417/2019

[Arising out of Order-in- Appeal No.NGP/EXCUS/000/APPL/504-508/16-17, dt.09.01.2017, passed by the Commissioner (Appeals), CE & C, Nagpur]

Naveen H. Bagadiya **......Appellant**
House No.4, Neelkanth Vihar,
Golegaonkar Colony, Station Road,
Aurangabad 431 001

VERSUS

CCE & ST, Aurangabad **......Respondent**
Aurangabad Commissionerate,
N-5, CIDCO,
Aurangabad 431 030

Appearance:
Shri A.K. Prabhakar, Advocate for the Appellant
Mrs. A.S. Parab, AC (AR) for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.A/86080-86081/2019

Date of Hearing: 10.06.2019
Date of Decision: 10.06.2019

PER: D.M. MISRA

The learned Advocate for the Appellant submits that Appeal No.E/85417/2019 filed by the Director Shri Naveen H. Bagadiya arising out of the same impugned order which is also involving delay of 660 days in filing the appeal before this forum, is pending before this Tribunal. He submits that this appeal was listed before SMB on 04.06.2019 and adjourned to 09.07.2019, as the Appellant could not remain present on that day. He submits that the said COD application/appeal be also taken up with the present appeal since arise out of the same order. The learned A.R. has no objection. Therefore, the said COD application and appeal are also taken up along with present COD application and appeal listed today for disposal.

2. Heard both sides. Both these applications are filed seeking condonation of delay of 660 days in filing the appeals before this forum.

3. Explaining the delay supported by an Affidavit, the Appellant has submitted that one of the Director of the Company resigned on 04.08.2016 and the Manager of the Company Shri Prakash P.

Bhandare, who was looking after taxation matters, due to acute illness, left the employment w.e.f. 01.09.2017. It is submitted that the said resignation and indisposition has crippled the manpower of the Appellant Company. Therefore, they could not file the appeal. The Appellant came to know about the impugned order only when recovery officers of the Department came for recovery of confirmed demand in January 2019. Appeal was filed thereafter on 06.04.2019. Hence, the delay be condoned.

4. On the direction of the Bench, the learned A.R. called a report from the field formation about communication of the order/recovery of confirmed dues. It is reported by Assistant Commissioner (Appeals) on 13.05.2019 intimating that the first recovery notice was dispatched to the Appellant on 17.04.2017 and thereafter from time to time recovery notices were issued to the Appellant on various dates. Therefore, she submits that the contention of the Appellant that first recovery notice was issued in January 2019 is incorrect on facts. Also, she submits that the reasons stated in the application are not sufficient warranting condonation of inordinate delay.

5. We have carefully considered the submissions made by both sides. We find that the order was dispatched to the Appellant by speed post on 18.01.2017 and the recovery notice was issued to the Appellant in April 2017 and they did not initiate any action in filing appeal before this forum. One of the Director resigned much earlier to the passing of the order and the sickness one of the employee resulting to his leaving the job subsequently cannot be

valid reason for cause of the delay. Therefore, we do not find substance in the applications seeking condonation of inordinate delay of 660 days in filing the appeals before this forum. Rather, we find that it is the result of gross negligence on the part of the Appellant in not filing the Appeal in time. In these circumstances, the delay cannot be condoned in view of the of the principles of law laid down by Hon'ble Supreme Court in the case of Office of the Chief Post Master General Vs. Living Media India Ltd – 2012 (277) ELT 289 (SC).

6. Both the COD applications and consequenlty the appeals are dismissed.

(Dictated and pronounced in the open court)

(D.M. Misra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Bahalkar