CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Excise COD Application No. 85272 of 2019
(On behalf of Appellant)
In
Excise Appeal No. 85618 of 2019

(Arising out of Order-in-Appeal No. PUN-CT-APPII-000-285-17-18 dated 03.01.2018 passed by the Commissioner of Central Tax (Appeals), Pune-II.)

M/s Worldwide Oilfield Machines Pvt. Ltd. ....Appellant
Gat No. 778, at Post Velu,
Tal.-Bhor, Dist.-Pune – 412 205

VERSUS

Commissioner of Central Tax, Pune-II ....Respondent
ICE House, 41/A, Sasson Road,
Pune – 411 001

APPERANCE:

Shri Sachin Chitnis, Advocate for the Appellant
Shri Sanjay Hasija, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

ORDER NO. A/87369 / 2021

Date of Hearing: 15.12.2021
Date of Decision: 21.12.2021

COD application seeking condonation of delay of 359 days is heard today and taken up for orders.

2. Learned Counsel for the Applicant/ Appellant, in submitting several decisions numbering 12 in including 4 of the Supreme Court

orders, submitted that appellant's security guards had received the envelope containing order passed by the Commissioner (Appeals) and kept it unattended, after which he also forgot to hand it over to the concern officer that had occasioned the delay, for which the company as a whole should not suffer. He further argued that Hon'ble Supreme Court has consistently held that liberal approach is required to be taken while applying principles contained in limitation act in condoning the delay.

3. Learned Authorised Representative for the Opposite Party/Respondent-department, in submitting 10 judgements in total passed by this Tribunal as well as by the High Courts and the Supreme Court, argued that contradictory findings are available to the effect that if the delay is for a considerable time, the same is not condonable when cause appears to be insufficient.

4. I have gone through the cited judgments, the affidavit filed by the concern security guard and the written note of submissions made by the appellant. Admittedly, it is a refund application that has been rejected and by delaying the process appellant could not have gained much. However, having regard to the content of the affidavit mainly at para 2 that the said security guard had not attached any importance to a letter delivered to him by Speed-post, left it unattended and forgot to hand it over to the concern official would itself speak volumes about the negligent approach of the appellant company in authorising the security guard as Dak receiving staff and

not becoming vigilant in cross checking whether inward entry of correspondences were effected properly. Further, a period of 359 days which is nearing a year is not a small period that requires liberal approach for condoning the delay in view of the fact that in the judgment cited by the learned Counsel for the appellant namely *Vedabai @ Vaijayanatabai Baburao Patil* Reported in *2001 (132) ELT 15 (SC).* it has been clearly held by the Hon'ble Supreme Court that distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days whereas in the former case the consideration of prejudice to the other side will be a relevant factor for which the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. In all other judgments of Hon'ble Supreme Court the period of delay varies between 4 days to 78 days only. On the other hand, the case laws cited by the learned Authorised Representative for the respondent-department relates to delay of unreasonable period mainly between 700 to 989 days. Therefore, to my considered view, as has been accepted as a settled position of law, period of delay being a significant factor to weigh the same with sufficient cause is held to be a question of fact and the assessment of the same is discretionary in nature.

5. In view of the fact that the negligent act of the company in not assigning the responsibility of receiving at least important dak to a responsible person and leaving the same at the disposal of the security guard for which 359 days delay had occurred cannot be

treated as a reasonable ground to condone the delay in filing the appeal. Hence the order.

6. The COD application seeking condonation of delay of 359 days in filing the appeal is rejected and consequently the appeal No. E/85618/2019 is also dismissed for not being accepted for hearing on the ground of unreasonable delay in filing of the appeal.

(Order pronounced in the open court on 21.12.2021)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

List of case laws

From the Applicant/Appellant's Side

1. Gangadhara Palo – [2011 (266) ELT 3 (SC)]
2. Bhag Singh & Others – [1987 (32) ELT 258 (SC)]
3. Karan Monomers Pvt. Ltd. –[2013 (297) ELT 522 (Guj)]
4. Commissioner of Customs (Airport) –[2013 (293) ELT 513 (Cal.)]
5. Margra Industries Ltd. – [2013 (293) ELT 74 (Guj)]
6. Jewel International – [2009 (247) ELT 204 (T)]
7. Mullaji Prints – [2004 (165) ELT 542 (T)]
8. Rahul Sprints – [2008 (222) ELT 449 (T)]
9. Mst. Katiji And Ors. – [1987 (28) ELT 185 (SC)]
10. J.M. Ramchandra & Sons – [2002 (139) ELT 36 (T)]
11. Vedabai @ Vaijayanatabai Baburao Patil –[2001 (132) ELT 15 (SC)]
12. Teksons Ltd. – [2000 (118) ELT 657 (T)]

From the P.P./Respondent's side

1. Office of the Chief Post Master General – [2012 (277) ELT 289 (SC)]
2. Kamal Electricals Vs. CESTAT – [2015 (37) STR 732 (P & H)]
3. Rasi Tex (India) Pvt. Ltd. – [2014 (309) ELT 295 (Tri.- Chennai)]
4. Kluber Lubrication India Pvt. Ltd. – [2014 (305) ELT 0390 (Mad.)]
5. Anvil Cables Pvt. Ltd. – [2014 (305) ELT 120 (Jhar.)]
6. Anvil Cables Pvt. Ltd. – [2015 (318) ELT A248 (S.C.)]
7. R.K. Ispat Ltd. - 2013 [(290) ELT 0216 (P & H)]
8. Rajlaxmi Petrochem Pvt. Ltd. – [2013 (289) ELT 0171 (Tri.- Mumbai)]
9. Radhakrishna Shipping P. Ltd. – [1998 (100) ELT 479 (Tribunal)]
10. Bharat Sanchar Nigam Ltd. – [2016 (342) ELT 34 (P & H)]

Prasad/-