



HIGH COURT OF SIKKIM
Record of Proceedings

W.P.(C) No.19/2018

M/S SINGBEL GPU CONSTRUCTION
CO-OPERATIVE SOCIETY LTD.

PETITIONER (S)

VERUS

COMMISSIONER OF CUSTOMS, CENTRAL
EXCISE AND SERVICE TAX, SILIGURI
COMMISSIONERATE AND ANR.

RESPONDENT (S)

Date: 18/07/2019

CORAM :

**HON'BLE MR. JUSTICE VIJAI KUMAR BIST, CJ.
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, J.**

For Petitioner (s) : Mr. Sourav Sen and Ms. Rupa Dhakal,
Advocates.

For Respondent (s) : Mr. B. K. Gupta, Advocate.

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1. Against the Order dated 31.03.2015 passed by the Joint Commissioner, Customs, Central Excise and Service Tax, Siliguri Commissionerate, imposing service tax amounting to Rs.6,08,145/- (Rupees six lakhs, eight thousand, one hundred and forty five) only, including Ed Cess and SHE Cess, as applicable under Section 73(2) of the Finance Act, 1994 (hereinafter, Act of 1994) and interest at the applicable rate on the said amount, under Section 75 of the Act of 1994 and penalty under Section 78 of the Act of 1994, for suppressing the value of taxable service provided by them, the Petitioner filed an appeal before the Commissioner of Customs, Central Excise and Service Tax (Appeal I) along with an application for condonation of delay on 07.10.2016.



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2. In the condonation of delay application, the Applicant has attempted to explain the delay up to 14.08.2015, in the following manner:-

Sl. No.	Period from and up to	Particulars	No. of days
1.	23.05.2015 - 08.06.2015	Petitioner received the order on 23.05.2015 and send the order to the advocate's office who received 08.06.2015.	16
2.	08.06.2015 - 22.06.2015	The Advocate was out of station to attend the case of another client.	15
3.	23.06.2015 - 27.06.2015	The Advocate after getting the order requested the papers from the dealer for the preparation of the draft that was received by the Advocate on 27.06.2015.	05
4.	28.06.2015 - 30.06.2015	The Advocate after making the draft sent to petitioner for approval.	03
5.	01.07.2015 - 16.07.2015	Your petitioner could not go through the draft due to the some natural calamity it is receive on 16.07.2015.	16
6.	17.07.2015 - 25.07.2015	Your petitioner send the draft with remarks to Advocate for the preparation of final papers.	09
7.	26.07.2015 - 29.07.2015	The Advocate made ready the final petition and send to the petitioner for signature.	04
8.	30.07.2015 - 07.08.2015	The Assessee received the final papers for signature on 07.08.2015.	09
9.	08.08.2015- 14.08.2015	The authorized signatory after signature sent for filing the petition.	07
		TOTAL	84
	LESS:	Statutory limitation period	60
		Actual delay liable to be condoned	24

3. In the said application, no efforts were made by the Petitioner to explain the delay from 15.08.2015 till 07.10.2016, the date when the Appeal was filed before the Commissioner, Customs, Central Excise



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and Service Tax. The Learned Commissioner dealt with the condonation of delay application in the following manner.

"6. In condonation application the reasons assigned for delay are flimsy wherein it has been stated that there has been a delay in submission of appeal against order dated 31.05.2015 by **24 days** because the appellant sent the said O-I-O to their advocate who was out of station. Then the advocate took papers from the dealer to prepare the draft and the advocate sent the draft to the appellant which could not be received by the appellant due to natural calamity. Lastly, the final papers were sent for filing the appeal by the appellant on 14.08.2015 after signing of the documents. Thus, the **appellant calculates the time period between 23.03.2015 to 14.08.2015** and finished their responsibility for filing only after signing and did not take the responsibility of **delay upto the date of actual filing i.e. 07.10.2016. But actual calculation of delay** in filing is from **23.05.2015 to 07.10.2016** which is more **than 01 year 04 months."**

4. Learned Counsel for the Petitioner submits that delay can be condoned duly imposing costs and the case be considered on merits to subserve the ends of justice.

5. We have heard and considered submissions of Learned Counsel for the Petitioner and meticulously perused records placed before us.

6. The Petition for condonation of delay reflects a lackadaisical approach on the part of the Petitioner herein and as already pointed out no efforts were made to explain the delay from 15.08.2015 to 07.10.2016. We are conscious and aware that the law of limitation is sufficiently elastic to allow and enable the concerned Authorities to apply it for substantial justice, but at the same time it may be mentioned that merely because a non-pedantic approach should be



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adopted to an application for condonation of delay it is not essential that every delay including those in which the drafting has been done in a haphazard manner and with nary a care to detail or explanation pertaining to the delay with dates thereof be condoned.

8. In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others : (2013) 12 SCC 649***, it was held *inter alia* that an application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

9. In our view, since the Petitioner has not explained the delay after 14.08.2015 which extended to more than one year, we are in agreement with the findings of the Learned Commissioner and that no error arises in the consequent order of rejection of the said Authority.

10. Resultant, the merits of the matter cannot be looked into and the Writ Petition stands dismissed.

Judge
18.07.2019

Chief Justice
18.07.2019

Index : ~~Yes~~ / No
Internet : Yes / ~~No~~

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