

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF AUGUST 2011

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MR. JUSTICE RAVI MALIMATH

WRIT PETITION NO.11090 OF 2011(T-RES)

BETWEEN:

M/s Affiliated Computer Services (I) Pvt Ltd.,
Level 6, International Tech Park
Innovator Block, Whitefield Road,
Bangalore - 560 066
Represented by Mr. Rao Raghvendra M.N
VP-Finance)

...PETITIONER

(By Sri K.S.Ravi Shankar, Advocate)

AND:

1. The Commissioner of Service Tax
No.16/1, S.P.Complex,
V Floor, Lalbagh Road,
Bangalore - 560 027.
2. The Deputy Commissioner of Service Tax
Anti-evasion, S.P.Complex
Lalbagh Road,

✓

Bangalore - 560 027.

...RESPONDENTS

(By Sri N.R.Bhaskar, Advocate)

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India praying to quash the impugned direction/communication in Annexure F Final order No.1531/2010 dated 22.12.2010 and etc.

This Writ Petition coming on for Orders this day, KUMAR J., made the following:-

ORDER

Sri.N.R.Bhaskar, learned Standing Counsel is directed to take notice to the respondent.

2. Heard the learned Counsels for the parties.
3. The assessee preferred an appeal against the order passed by the Commissioner of Central Excise (Appeals). There was a delay of 42 days in preferring the appeal before the Commissioner of Central Excise. In the affidavit filled in support of the appeal, he has set out the circumstances under which the delay is caused. However, the Tribunal was not satisfied with the bonafide explanations given by the assessee and therefore, they

refused to condone the delay and consequently, the appeal came to be dismissed. Hence the present appeal by the Assessee.

4. The delay is 42 days. The Apex Court has laid down in the case of *Anantnag and anr. vs. Mst. Katiji and ors. reported in 1987 (28) ELT 185 (SC)*, how the question of delay has to be considered by the Appellate Courts. No doubt, ultimately, it depends on the facts of each case. Having regard to the circumstances explained in the affidavit by the assessee and the law laid down by the Apex Court, we are of the view that the Appellate Tribunal has taken a narrow view of the matter. An Appeal is a substantive right. The assessee should have a full opportunity to put forth his case and should be able to get relief, if any, in accordance with.

5. It is difficult to sustain the assessee's negligence. However, the assessee cannot also be let scot free. Now,

he has preferred this appeal and the learned advocate for the Department has to appear and contest the matter. Hence, we deem it proper to impose costs of Rs.5,000/- on the assessee. Accordingly, we pass the following

ORDER

The appeal is allowed. The impugned order is set aside. The assessee/appellant shall pay a sum of Rs.5,000/- to the respondent as costs.

Sd/-
JUDGE

Sd/-
JUDGE

Prs*