IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23.4.2015.

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.12054 of 2015
and
M.P.No.1 of 2015

Mahesh Kumar V.K.
Proprietor: Gunasunder Enterprises
D/No.MMCX/249
Near Registrar Officer CHOKLI Mahe
Union Territory of Puducherry ... Petitioner

vs.

The Appellate Assistant Commissioner
Commercial Taxes Department
Government of Puducherry
Puducherry. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records on the file of the respondent herein in No.732/APRR/2014-15/AAC dated 18/12/2014 quashing the same and to direct the respondent herein to admit the appeal by considering the bonafide delay of 81 days as explanation supported by the medical certificate.

For Petitioner : Mr.A.Dinesh Kumar

For Respondents : Mr.A.Tamilvanan,
Government Advocate (Pondicherry)

ORDER

This writ petition is directed against the order dated 18.12.2014 passed by the appellate Assistant Commissioner (CT) Puducherry on the ground that the appellate Assistant Commissioner has no jurisdiction to entertain the appeal beyond 60 days from the date from which the order copy was served.

2. Learned counsel appearing for the petitioner would submit that after the petitioner was served with an order from the assessing officer, Mahe based on best judgment vide order dated 22.8.2014 imposing 100% penalty, he preferred an appeal against the order before the appellate Assistant Commissioner on 11.12.2014 under section 47(1) of the Puducherry Value Added Tax Act, 2007, properly explaining for the bona fide delay of 81 days with corroborating evidence and documents with medical certificate. When it was properly explained that it was not due to any fault or laches on the part of the petitioner but, the delay had occurred due to the medical reasons stated by the physician in the report dated 10.12.2014, the delay, being neither wilful nor wanton, should have been condoned. However, citing a reason that he has no jurisdiction to entertain the appeal beyond the statutory period of 60 days, the appellate authority rejected the same and therefore, the petitioner has approached this court. Drawing attention of this court to the decision of the High Court of Allahabad dated 12.1.2015 in Central Excise Appeal Defective No.155 of 2014 (M/s.Vibgyor Institute of Engineering and Tech. v. The Commissioner of Central Excise and Service), the learned counsel for the petitioner would submit that in the said case, there was a delay of 236 days in filing the appeal with explanation and supported by medical certificate, but, the appeal was dismissed, however, the High Court of Allahabad accepted the explanation supported by medical certificate and came to the conclusion that the dismissal of the appeal supported with medical certificate for condoning the delay was harsh and therefore, the appellate authority should have admitted the appeal.

3. Mr.A.Tamilvanan, learned Government Advocate (Pondicherry) takes notice for the respondent.

4. No doubt this is a case where the petitioner preferred an appeal after expiry of a period of 80 days from the date of receipt of order. As per section 47(1) of the Pondicherry Value Added Tax Act, 2007, the petitioner ought to have filed the appeal within 30 days from the date of 26.8.2014 on which date, the petitioner was said to have been served with the impugned order. Even as per the proviso to section 47 of the Act, the appellate Assistant Commissioner can admit the appeal presented after expiration of the said period of 30 days but, within a further period of 30 days if he is satisfied that the appellant had sufficient cause for the delay in presenting the appeal within a period of 30 days. Therefore, as per the above provision, the petitioner ought to have filed the appeal memorandum on or before 24.10.2014 whereas he has filed the appeal only on 15.12.2014 viz., after expiry of 81 days delay. Hence, the

appellate Assistant Commissioner refused to condone the delay on the ground that he has no jurisdiction to entertain the appeal.

5. The observation of the High Court of Allahabad, in a similar matter, while condoning 236 days in filing the appeal, I am of the view, squarely applies to the present case as the petitioner herein had filed the appeal with a delay of 86 days only with sufficient cause to condone the delay. It is also relevant to extract the relevant portion of the above decision hereunder:-

> "The present appeal has been filed against the order dated 30th August, 2013 and the order dated 30th September 2013. By the first order the stay application was dismissed for want of non-prosecution and, by the second order, the appeal was dismissed for not complying with the order of the Tribunal dated 30th August, 2013.
> Admittedly, the order dated 30th August, 2013 was an ex parte order. Since certain directions were indicated in that order, which was not known to the petitioner, therefore, the question of its compliance on or before the next date of hearing could not arise.
>
> We are of the opinion that the Tribunal was harsh in dismissing the appeal on a technicality."

6. It is also submitted that the petitioner had already paid a sum of Rs.1657/- towards the admitted liability. Therefore, in the light of the above decision, accepting the sufficient cause for delay supported with medical certificate, this court is inclined to set aside the impugned order and accordingly the same is set aside and remitted back to the appellate authority for deciding the appeal on merits after hearing the petitioner. The writ petition is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssk.

To

The Appellate Assistant Commissioner
Commercial Taxes Department
Government of Puducherry
Puducherry.

+1cc to Mr.A.Dinesh Kumar, Advocate, S.R.No.22031
+1cc to the Senior Government Pleader - cum Senior Public Prosecutor, S.R.No.22333

W.P.No.12054 of 2015

VD(CO)
CA(14/05/2015)