IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.31056 of 2015
& M.P.No.1 of 2015

S.Prasannan [Petitioner]

Vs

1.The Commissioner (Appeals-I)
O/o The Commissioner of
Central Excise,
Central Excise Building,
No.26/1, Mahatma Gandhi Marg,
Nungambakkam,
Chennai 600 034.

2. The Assistant Commissioner of
Central Excise,
Tambaram II Division,
Plot No.40, Ranga Colony,
Rajakilpakkam,
Chennai 600 073. [Respondents]

Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified mandamus calling for the records in Order-in-Appeal No.155/2015 on the file of the first respondent Commissioner (Appeals-I) and quash the same and consequently direct the 1st respondent Commissioner (Appeals-I) to condone the delay of 128 days on medical ground in filing the appeal in Order-in-Appeal No.155/2015 (M-III) (ST), dated 01.07.2015 to entertain the appeal and dispose of the same on merits.

For Petitioner : Mr.P.T.Perumal

For Respondents : Mr.V.Sundaresan,
Senior Standing counsel

ORDER

Heard the learned counsel for the petitioner and the learned Senior Standing counsel, who took notice for the respondents and with their consent, the main writ petition itself is taken up for disposal.

2.The writ petition has been filed under Article 226 of the Constitution of India seeking to quash the order of the 1st respondent/Commissioner (Appeals-I) dated 01.07.2015 and to direct the 1st respondent to condone the delay of 128 days on medical ground in filing the appeal and to entertain and dispose of the same on merits.

3. The petitioner is a proprietor of a firm doing re-trading work from the year 2005. The petitioner is providing maintenance and repair services. On surprise inspection conducted by the officers of SIR (Survey, Intelligence and Research Unit) it is alleged that the petitioner evaded to pay the service tax and hence, a show cause notice came to be issued.

4. According to the petitioner no taxable event had taken place invoking the provisions of Section 68 of Finance Act, 1994 read with rule 6 of Service Tax Rules, 1994. The specific case of the petitioner is that he is unaware of service tax liability on maintenance and repair services and never collected services tax. But on the failure of the petitioner in making payment of service tax including cess, an order of assessment came to be passed. The said order dated 28.11.2013 was challenged before the Appellate Authority and the Appellate Authority dismissed the same on the ground of delay. Therefore, the service tax liability along with interest had been paid by the petitioner and the learned counsel for the petitioner seeks indulgence of this Court to permit the petitioner to go before the Appellate Authority only with regard to the penalty imposed.

5. Learned Senior Standing counsel on the other hand submitted that the levy of penalty is automatic, once the petitioner failed to file appropriate returns and there is no justifiable reason for questioning the imposition of penalty.

6. I have considered both the rival contention.

7. With regard to service tax liability as well as levy of penalty, an order had been passed which was questioned by the petitioner before the Appellate Authority with the delay of 128 days. Since there was no power vested, the Appellate Authority refused to condone the delay in filing the appeal and dismissed the same. Hence, the order of the Appellate Authority does not suffer from any legal infirmity. At the same time, considering the specific circumstances and also the fact that the tax as well as interest had already been paid, and the petitioner confined his prayer to penalty alone, this Court is inclined to direct the Appellate Authority to look into the issue afresh and pass appropriate order on merits after hearing the petitioner. Such an exercise shall be completed, within a period of 4 weeks, from the date of receipt of a copy of this order.

This writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

smi
To
1.The Commissioner (Appeals-I)
O/o The Commissioner of Central Excise,
Central Excise Building,
No.26/1, Mahatma Gandhi Marg,
Nungambakkam, Chennai 600 034.

2. The Assistant Commissioner of Central Excise,
Tambaram II Division,
Plot No.40, Ranga Colony,
Rajakilpakkam, Chennai 600 073.

W.P.No.31056 of 2015

SAI(CO)
Eu 22.12.15