

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

Writ Petition No.1547 of 2015

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DATED:18.03.2015

Between:

The Tuni Municipality,
Represented by its Commissioner,
East Godavari District.

... Petitioner

And

The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
Bangalore and others.

....Respondents

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
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Order: (per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This writ petition has been filed to challenge the order dated 8.9.2014 passed by the learned Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, being the 1st respondent herein.

It appears, the writ petitioner, Commissioner of Municipality aggrieved by the order of assessment preferred an appeal before the 1st appellate authority under the statute, namely, the Commissioner of Central Excise, Customs & Service Tax, who found that the appeal was filed even beyond the condonable period prescribed under the legal provisions for preferring an appeal. Hence, the appeal was dismissed. This order of dismissal was taken to the 1st respondent and it was found by it by the impugned order that the appeal was rightly dismissed as it was presented even beyond the condonable period.

Identical issue came up before this Court for decision in Writ Petition No. 122 of 2015 (**M/s. Star Enterprises vs. The Joint Commissioner and others**) wherein this Court held as follows:

Here, the issue is after availing the remedy unsuccessfully before another Court whether we can accept the challenge to the self same order, which has reached its finality under writ jurisdiction or not. According to us, it is not legally permissible, if it is done the writ

court will unsettle a legally settled position. We think that when appellate authority has already decided the matter against the petitioner, the writ Court is debarred from doing so and the same binds the writ Court applying the principle of *res judicata*, particularly, when the appellate authority's orders are not challenged in the writ jurisdiction.

Here the distinguishing fact is that the order of the appellate authority has been challenged. But, we do not find any flaw in the order as the first appellate authority has no power to accept the appeal presented beyond the condonable period. According to us, the writ petitioner has rendered itself remediless under the law. When the remedy is not available, the question of entertaining the writ petition does not and cannot arise.

We therefore dismiss the writ petition.

Pending miscellaneous applications shall also stand closed.
No costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR,
J

18th March, 2015

Pnb

