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IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

C.E.A. NO. 98 of 2015

Between:

Mr P. Venugopal Naidu
S/o Late P. Venkata Subbaiah Naidu, Aged about 38 years, Occ: Business, 6-7-567/301, Sai Praneetha Reddy Nilayam, Sripuram Colony, Tirupathi, Tirupathi-517501, Andhra Pradesh.

….Appellant

Vs.

The Commissioner of Customs, Central Excise & Service Tax, Tirupathi Commissionerate, 9/86-A, Amaravathi Nagar, West Church Compound, Tirupathi-517501.

…. Respondent

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DATE OF JUDGEMENT PRONOUNCED: 26.08.2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE G.CHANDRAIAH
AND
HON’BLE SRI JUSTICE CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

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***HON'BLE SRI JUSTICE G.CHANDRAIAH**
AND
HON’BLE SRI JUSTICE CHALLA KODANDA RAM

+C.E.A. NO. 98 OF 2015

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S/o Late P. Venkata Subbaiah Naidu, Aged about 38 years, Occ: Business, 6-7-567/301, Sai Praneetha Reddy Nilayam, Sripuram Colony, Tirupathi, Tirupathi-517501, Andhra Pradesh.

…. Appellant

Vs.

$ The Commissioner of Customs, Central Excise & Service Tax, Tirupathi Commissionerate, 9/86-A, Amaravathi Nagar, West Church Compound, Tirupathi-517501.

…. Respondent

! Counsel for the Appellants: M.V.J. K. Kumar

Counsel for the Respondents: Sri Jalakam Satyam

<Gist:

>Head Note:

? Cases referred:

HON'BLE SRI JUSTICE G.CHANDRAIAH
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM
C.E.A. NO. 98 OF 2015

JUDGMENT: (per Hon'ble Sri Justice CHALLA KODANDA RAM)

The order dated 17.6.2015 passed by the Customs Excise and Service Tax Appellate Tribunal, South Zone Bench, Bangalore ('Appellate Tribunal' for short) in ST/20500/2015-DB, dismissing the condonation of delay petition and consequently dismissing the appeal, as barred by limitation, is challenged in this appeal by the appellant.

2. In the appeal, the following questions of law have been raised:

(a) Whether the learned CESTAT is justified in dismissing the delay condonation petition filed by the appellant on the ground that the delay of almost 2 ½ years without any plausible explanation is because of latches and cannot be condoned in spite of specific, bonafide, actual and factual reasons stated by the appellant which are beyond its control?

(b) Whether is the tribunal justified in holding that the appellant should be aware of the fact that he has to deposit the tax and ought to have perused by approaching the service recipient or other contractors for deciding the future course of action in spite of the specific reason stated by the appellant that he is an illiterate and does not know about any of the provisions more particularly the appellant provisions?

(c) Whether is the learned CESTAT is justified in holding that the appellant is not diligent for the reason the appellant was made to believe that the tax is going to be reimbursed by TTD and he can pay the same?

(d) Whether the Tribunal is justified in dismissing the appeal for the reason that the tax levied in majority is not payable as the works executed by the appellant are out of the purview of the Act and failed to take into consideration, the grounds raised in the appeal with regarding to the non eligibility of the tax and also the computation of the turnovers and also the relevancy of the memos referred to an the cases relied in the Grounds of Appeal?

(e) Whether or not the Tribunal order in not condoning the delay is harsh and perverse as the Tribunal failed to consider the contention that the very levy is without jurisdiction and contrary to the provisions of the statute which goes into route of the mater in which case delay or latches cannot be taken into consideration for the purpose of deciding the issues as held by the Hon'ble Apex Court reported in 1992(2) SCC 598, 66 STC 228 and the judgment of this Hon'ble Court reported in 2010 (2) ALD 789 AND 2007 (209) ELT 321?

3. Sri M.V.J.K. Kumar, learned counsel appearing for the appellant, submits that the appellant is engaged in execution of civil and other engineering works in the State of Andhra Pradesh and particularly the appellant has been executing works for Tirumala Tirupathi Devastanam ('TTD' for short). During the period 2007 to 2012, though the appellant executed works worth Rs. 4.70 crores, the taxable turnover would be about 71 lakhs. As there is huge exempted turnover of about 4.06 crores, the appellant was under the bonafide impression that the execution of works contracts is not liable for service tax, did not approach seeking registration with the department and did not pay the service tax. Not only the appellant the entire contract community, who were executing works for TTD were under the same bonafide belief. Further, the TTD

officials had assured that they would discharge the service tax liability, the appellant had not included into the component of service tax in the process of their quoting for the works. This aspect was taken note off by the TTD and in fact, they had assured that they would be discharging their liability. Appellant, like others through their association under the name ‘Tirumala Tirupathi Devesthanam Contractors Association” had made a representation to the Chairman and members of Tirumala Tirupathi Devesthanam Trust Board, Tirupathi in the year 2012 and the same is also under consideration. It is only on account of the assurance, which has been given by the TTD, the appellant did not approach the Appellate Forum as they were under the bonafide belief that the tax liability would be discharged by the TTD themselves directly. Inasmuch as substantial rights are involved and particularly the determination of the taxable turnover is both mixed questions of fact and law and such exercise having not been done by the Commissioner while passing the order in Original and if the delay is not condoned, the appellant would suffer irreparable loss. In that view of the matter, the counsel appearing for the appellant submits that the Appellate Tribunal ought to have taken lenient view in considering the application for condonation of delay.

4. On the other hand, Sri Jalakam Satyam, learned Standing Counsel appearing for the respondent vehemently opposes the entertaining of appeal itself and he would submit that the appellant by his own act has failed to avail the remedy of appeal and in that view of the matter, the order of the Tribunal dismissing the condonation of delay petition and consequently the appeal is unassailable and prays for dismissal of the same.

5. We have perused the record and considered the rival submissions. The reasons for seeking condonation of delay is only one singular reason which has been stated in the affidavit that the appellant was under bonafide belief that TTD would discharge their liability with respect of service tax. Inasmuch as the appellant was under the impression that the service tax is only a pass-through and payable by TTD, they did not file any appeal. Though the taxable turnover so far as the service tax is concerned, is alleged to be only about 70 lakhs

notwithstanding the total turnover of Rs. 4.70 crores, we are of the opinion that the reasons stated in the delay condonation petition are not fully satisfactory. However, we also notice that the order in Original was passed on 30.11.2012. Even as on today, no steps were taken by the department in collecting the tax amount, which has been demanded by the order dated 30.11.2012. Assuming the delay is caused in asserting the right by the appellant, there is also lapse on the part of the department in not enforcing the order which has been passed on 30.11.2012 even after expiry of the appeal time under the Statute. At the same time, if the contention of the appellant on merits finds acceptance in final adjudication by the Tribunal that the taxable turnover would only be 70 lakhs, the denial of consideration of the appeal on merits would cause prejudice to the appellant.

6. In that view of the mater, we are inclined to take a lenient view in the peculiar facts of the present case and condone the delay on the appellant depositing of Rs. 26,00,000/- (Rupees Twenty Six Lakhs Only) in favour of the Commissioner of Customs, Central Excise & Service Tax, Tirupathi Commissionerate, within four weeks from today. On such amount being deposited, the appeal before the Tribunal shall stand restored and the appeal shall be dealt with in accordance with law. Considering the fact that the order in Original was passed on 30.11.2012, we consider it appropriate to direct the Appellate Tribunal to dispose of the appeal, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

7. With the above observation, the Central Excise Appeal is allowed. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

Date: 26.08.2015
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