IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2016

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THE HON'BLE MR.JUSTICE **NOOTY.RAMAMOHANA RAO**
AND
THE HON'BLE Dr.JUSTICE **ANITA SUMANTH**

Civil Miscellaneous Appeal No.2153 of 2016
and C.M.A.No.2153 of 2016

M/s.Sree Gayatri,
III/695-C, Kottaram Junction,
Maradu, Cochin-682 304. ... Appellant

Versus

1. Customs Excise and Service Tax
   Appellate Tribunal, South Zonal Bench,
   No.26, Haddows Road, Chennai-600 006.

2. The Commissioner of Central Excise,
   Tractor Road, Central Revenue Buildings,
   N.G.O. 'A' Colony,
   Tirunelveli-627 007.

3. The Additional Commission of Central Excise,
   Tractor Road, Central Revenue Buildings,
   N.G.O. 'A' Colony,
   Tirunelveli-627 007. ... Respondents

Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944, against the Final Order No.40562/2014 dated 27.08.2014 on the file of Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Ms.J.Ragini
for M/s.S.Murugappan
For Respondents : ...

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J U D G M E N T

(JUDGMENT OF THE COURT WAS DELIVERED
BY **NOOTY.RAMAMOHANA RAO, J.,)**

This Civil Miscellaneous Appeal is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South ZonAL Bench, Chennai, rendered in Final Order No.40562 of 2014 dated 27.08.2014, dismissing the appeal preferred by the appellant to the said Tribunal, calling in question the orders passed by the Commissioner (Appeals), rejecting the appeal preferred by the appellant as time barred.

2. The case as set up by the appellant was that the order in original passed by the primary authority on 29.03.2011 was not received by them at their Tuticorin Office as they have shifted from Tuticorin in January, 2011 itself to Cochin, Kerala State. Therefore, it was stoutly disputed that they have received the order in original on 05.04.2011.

3. The Department, to substantiate their claim that the order-in-original passed on 29.03.2011 has been despatched promptly, have placed before us a copy of the relevant entry found at Page No.273 of the 'Despatch Register' maintained in the Office of the Primary Authority. It appears therefrom that the order-in-original dated 29.03.2011 has been despatched by way of registered post acknowledgment due bearing No.6236 at Perumalpuram Post Office of

Tirunelveli. They have also placed before us a copy of the reply received by the Assistant Commissioner, Office of the Commissioner of Central Excise, Tirunelveli, from the Postmaster, Perumalpuram on 21.10.2013, enclosing proof of delivery of the registered article bearing No.6236 on 05.04.2011. The tracking record of the registered article No.6236 has also been enclosed from the Postmaster. It could be clearly noticed that the registered Article bearing No.6236 has been delivered to the addressee on 05.04.2011.

4. It is the contention of the appellant all through that they have shifted their office from Tuticorin to Cochin and hence, disputed the factum of receipt of the order-in-original on 05.04.2011 and hence the delay has occasioned in preferring the appeal.

5. When we have carefully perused the order-in-original dated 29.03.2011, the following facts have emerged therefrom:

The show cause notice dated 19.10.2009 has been delivered to the appellant on 20.10.2009. Time was sought for till 18.12.2009, to respond. Thereafter, another request was made seeking extension of time up to 18.01.2010 and again extension was sought for up to 18.02.2010. For the failure to submit their reply to the show cause notice, another notice dated 23.02.2010 was issued by the department to submit immediately their reply and also to intimate as to whether they wished to be heared in person. There was no response from the appellant. Hence, the department intimated on 27.04.2010 that the date of personal hearing is fixed on 05.05.2010 through a Fax Message. On 03.05.2010, the appellant requested to give time up to the 1st week of June 2010 for attending the personal hearing. Accordingly, personal hearing was fixed on 16.06.2010. Then Sri.S.S.Sharma, Finance Controller of the Firm appeared for the personal hearing and requested for two weeks time to prepare reply for the show cause notice and also offer justifications. The explanation was offered on 28.06.2010 to the show cause notice. Again, the appellant did not produce the necessary material in support of the claim. After repeated requests, the appellant firm submitted their reply in respect of the year 2008-2009 on 02.08.2010. Personal hearing was also accorded on 18.03.2011. In response thereto, the appellant made a request vide their letter dated 15.03.2011 requesting for postponing the hearing up to 28.03.2011. The department conceded to that request by their letter dated 17.03.2011 by fixing the personal hearing on 28.03.2011. Instead of participating at the personal hearing, a Fax Message has been sent on 28.03.2011 requesting for further postponing of personal hearing to 04.04.2011. Finding that the appellant is not co-operating with the department, the request for further postponement has not been conceded to and the order-in-original came to be passed on 29.03.2011.

6. From the above, we would gather that the appellant has entered into correspondence with the Primary Authority as lately as on 15.03.2011 and 28.03.2011. But, never brought to the notice of the department that they are not operating from their Tuticorin Office premises and instead, shifted their operations to Cochin. The default in this regard lies with the appellant. Thus, there is no warrant for us to believe that they have not received the order-in-original on 05.04.2011.

7. This apart, even on their own showing, the appellant has sought for postponement of the personal hearing from 28.03.2011 to 04.04.2011. Therefore, onus lies on the appellant to ascertain as to whether the hearing on 28.03.2011 has been postponed or not and if the hearing is not postponed as to what action has been taken with regard to the said show cause notice drawn on 19.10.2009.

8. Therefore, we are convinced that the appellant was only seeking adjournments to delay the enquiry and is not co-operative. The various opportunities provided by the Primary Authority have not been utilised. Hence, the explanation offered for not preferring the appeal in time does not inspire confidence in our minds. We find no infirmity in the order passed by the Tribunal.

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9. Accordingly, the appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

(N.R.R.J.) **(A.S.M.,J.)**

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Index : Yes.
Internet : Yes.
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