In the High Court of Judicature at Madras

Dated : 24.3.2016

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice N.KIRUBAKARAN

Civil Miscellaneous Appeal No.677 of 2016 and CMP.No.5481 of 2016

M/s.Hitech Manpower Consultant
Pvt. Ltd., rep.by its Director
Ahamed Rifai Ahamed, Chennai-6. ...Appellant/Appellant

Vs

1.The Customs, Excise & Service Tax
Appellate Tribunal, South Zonal
Bench, Chennai-6.

2.The Assistant Commissioner of
Service Tax, Service II Commissionerate,
Division-II, Newry Towers, Chennai-40.

3.The Commissioner of Service Tax,
Anna Salai, Chennai-35. ...Respondents/Defendants

APPEAL against the order dated 26.5.2014 made in Final Order No.40332 of 2014 against the order of the Commissioner of Central Excise, Chennai-IV, Commissionerate M.H.U Complex, Nandanam, Chennai-35 dated 4/10/2012 in C.No.IV/9/676/2009 STC Adj on the file of the first respondent.

For Appellant : Mr.K.V.Sanjeev Kumar
For Respondents 2 & 3 : Mr.A.P.Srinivas

Judgment was delivered by V.RAMASUBRAMANIAN,J

This appeal, filed by the assessee, arises out of an order passed by the Customs, Excise and Service Tax Appellate Triubnal refusing to condone the delay of 190 days in filing the appeal before the Tribunal.

2. Heard Mr.K.V.Sanjeev Kumar, learned counsel for the appellant and Mr.A.P. Srinivas, learned Senior Panel Counsel for respondents 2 and 3.

3. The appellant was served with an Order in Original dated 4.10.2012, imposing a penalty of Rs.1,75,96,914/-, for the short payment of service tax. As against the said order, the appellant filed an appeal before the Tribunal along with an application for condonation of delay. Holding that the delay was not properly explained, the Tribunal dismissed the application, forcing the assessee to come up with the above further appeal.

4. Due to the fact that the service of the copy of the Order in Original upon the appellant was admitted, the Tribunal came to the conclusion that the reasons stated for the delay were not acceptable. But, merely because the order copy has been served on the appellant, it cannot stated that the delay is not properly explained.

5. The relevant portion of the application for condonation of delay reads as follows:

> "The applicant would state that the applicant company has been closed and has not been in operation for the last 4 years. There is no business in the company and the company had incurred huge losses. There are no employees in the company, who receive remuneration. In these circumstances, the Order in Original was received by Mr.P.Babu, who is an employee of M/s.Hometech Services P. Ltd and Mr.P.Babu misplaced the Order in December 2012. No one was in the company to guide the management to file an appeal. It was only on September 7, 2013 the papers were re-traced and the applicant sought assistance for preparing the appeal. Thus, the applicant had missed the time limit of 3 months for filing the appeal. The applicant would state that the delay of 6 months 10 days therefore be beyond the reasonable control of the applicant."

6. It is true that the appellant ought have been more vigilant. The fault of the employee cannot be a reason normally for the condonation of the delay. But, considering the fact,

according to the appellant, that the business is already closed, we are of the view that the some leniency can be shown.

7. Accordingly, the civil miscellaneous appeal is allowed, the order of the Tribunal is set aside and the application for condonation of delay is allowed. The matter is remitted back to the Tribunal for proceeding further in accordance with law. Consequently, the above CMP is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Customs, Excise & Service Tax Appellate Tribunal, South
Zonal Bench,
Chennai-6.

2.The Assistant Commissioner of Service Tax, Service II
Commissionerate,
Division-II, Newry Towers,
Chennai-40.

3.The Commissioner of Service Tax,
Anna Salai,
M.H.U Complex, Nandanam,
Chennai-35.

+1cc to M/S.K.V.Sanjeev Kumar, Advocate Sr.18799
+1cc to M/S.A.P.Srinivas, Advocate Sr.18756

CMA.No.677 of 2016&
CMP.No.5481 of 2016

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