IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.4.2016

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.544 of 2016

G.K.Suresh Babu .. Appellant

Vs.

1. The Deputy Commissioner of Central Excise
   Office of the Deputy Commissioner of
   Central Excise
   Hosur II Division
   Hosur 635 126.

2. The Superintendent of Service Tax
   (Service Tax Cell), Hosur II Division
   Hosur 635 126. .. Respondents

Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 15.4.2016 made in W.P.No.14319 of 2016 on the file of this Court.

WP.NO.14319 of 2016:This Writ Petition is filed Under Article 226 of the Constitution of India seeking for a Writ of Certiorari, to Call for the records of the first respondent in connection with impugned notice passed by the first respondent in C.No.IV/17/ 08/2016-STC dated 04.04.2016 and quash the same.

For Appellant : Mr.M.D.Thirunavukkarasu

JUDGMENT
(Delivered by V.Ramasubramanian,J)

The writ appeal arises out of an order passed by the learned Judge dismissing a writ petition filed by the appellant challenging a demand of penalty and interest on the service tax.

2. Heard Mr.M.D.Thirunavukkarasu, learned counsel for the appellant.

3. By an order-in-original, bearing No.16 of 2006 dated 28.02.2007, the appellant was imposed with a penalty of Rs.1,51,686/- together with interest of Rs.27,360/-. Unfortunately, the appellant did not challenge the order-in-original before any forum and it attained finality.

4. After going into a slumber for about nine years, the Department suddenly woke up and issued a demand on 04.4.2016 for the entire amount. Challenging the said demand, the appellant filed a writ petition and the same was dismissed by the learned Judge on the short ground that without challenging the order-in-original, the consequential demand cannot be challenged. Hence, the appellant is before us.

5. We are entirely in agreement with the learned Judge. Though Mr.M.D.Thirunavukkarasu, learned counsel contended that his client was not served with a copy of the order-in-original dated 28.02.2007, the appellant never raised such a ground in the affidavit in support of the writ petition. On the contrary, the appellant pleaded financial hardship right from 2007 till 2016 as the reason for non payment. Therefore, it is not open to the appellant now to say that he must not be issued with the order dated 28.02.2007.

6. Lastly, the learned counsel for the appellant prayed at least to grant the facility of payment by instalments. But, this request should be made by the appellant only to the respondents.

7. Therefore, the appeal is dismissed. It will be open to the appellant to make a request for payment of the amount by instalments and as and when such a request is made, the respondents shall take into account any hardship suffered by the appellant and take a decision in accordance with law. Consequently, CMP No.7364 of 2016 is also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Reigstrar

kpl

To

1. The Deputy Commissioner of Central Excise
   Office of the Deputy Commissioner of Central Excise
   Hosur II Division, Hosur 635 126.

2. The Superintendent of Service Tax
   (Service Tax Cell), Hosur II Division
   Hosur 635 126.

+1 cc to M/s.M.D.Thirunavukkarasu Advocate sr25736

W.A.No.544 of 2016

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