IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2016

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.No.5194 of 2016
and
W.M.P.Nos.4566 and 4567 of 2016

M/s Days Inn Deccan Plaza (A Unit of Deccan's Park),
No.36, Royapettah High Road,
Chennai - 600 014
Represented by its General Manger,
R. Gowrishankar .... Petitioner

vs

1. Commissioner of Service Tax (Appeals)-I,
26/1, M.G. Marg, Nungambakkam,
Chennai - 600 034

2. Additional Commissioner of Service Tax,
Service Tax II Commissionerate,
" Newry Towers, 3rd Floor,
2054-I, 2nd Avenue,
Anna Nagar,
Chennai -600 040 ..... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified mandamus to call for the records of the first respondent in ORder-in-Appeal No.10/2014 (M-ST) dated 1.12.2014 and quash the same and further direct the first respondent to decide the case on merit.

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For petitioners : Mr.P. Ayyamperumal for
M/s. Sengu and Pappu Asso.

For respondents : Mr.A.P. Srinivas
Standing Counsel

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ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorarified mandamus to call for the records of the first respondent in Order-in-Appeal No.10/2014 (M-ST) dated 1.12.2014 and quash the same and further direct the first respondent to decide the case on merit.

2. The case of the petitioner is that as against the order of the second respondent dated 29.10.2010, the petitioner preferred an appeal before the first respondent, with a delay of 223 days. The first respndent, by order dated 01.12.2014, dismissed the appeal stating that the appeal has been preferred beyond the statutory time limit of three months and also beyond the condonable period of a further three months provided under Section 85 of the Finance Act, 1994. The appeal, preferred by the petitioners, was dismissed on the ground of limitation.

3. The learned counsel appearing for the petitioners submitted that the appeal could not be filed in time, for the reason that the person, who was dealing with service tax matters in their Organisation had left the service leaving the relevant papers in disarray.

4. The learned counsel, in support of his contention, relied upon a judgment of the Hon'ble Supreme Court reported in 2011 (273) ELT 345 (S.C) (Kranti Associates Pvt Ltd vs Masood Ahmed Khan), wherein the Hon'ble Supreme Court held that a quasi-judicial authority must record reasons in support of its contentions and in the absence of any reasons given by the authority, the same is liable to be set aside.

5. The leared counsel also relied on a judgment reported in 1987 (28) ELT 185 (S.C) (Collector, Land Acquisition Anantnag and another vs Mst.Katiji and others), wherein the Hon'ble Supreme Court held that ordinarily a litigant does not stand to benefit by lodging an appeal late and refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. Further the Hon'ble Supreme Court held that the delay should be properly explained by the authority who seeks for condonation of delay.

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6. Countering the submissions made by the learned counsel for the petitioners, Mr.A.P. Srinivas, learned Standing Counsel, appearing for the respondents submitted that there is no provision under the Finance Act to condone the delay of filing an appeal being the period of three months, prescribed under Sec.85 of the Finance Act 1994. Further, the learned Standing Counsel relied on a judgment of Division Bench of this Court reported in 2015 (37) S.T.R 187 (Mad) (Albert & Company Pvt Ltd vs Commissioner of Service Tax,

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Chennai), wherein, the Division Bench of this Court, while rejecting the contentions of the petitioner stating that the principles of natural justice have been violated by the authority and therefore, the delay should be condoned, held that under Sec.85(3) of the Finance Act, 1994, the appellate Tribunal does not have the power or the authority to extend the period of limitation prescribed by the statute, for entertaining the appeal. The Division Bench also relied upon the judgments of the Hon'ble Supreme Court for coming to the conclusion that the appellate Tribunal does not have the power or authority to extend the period of limitation. The ratio laid down by the Division Bench of this Court squarely applies to the facts and circumstances of the present case.

7. Following the dictum laid down by the Division Bench of this Court reported in 2015 (37) S.T.R 187 (Mad) (Albert & Company Pvt Ltd vs Commissioner of Service Tax, Chennai), I am of the view that the first respondent has rightly dismissed the appeal on the ground of limitation. Since the first respondent does not have the power to condone the delay beyond the period of three months, as provided under Sec.85 of the Finance Act 1994, the first respondent has rightly dismissed the appeal. I do not find any error or irregularity in the order passed by the first respondent. The writ petition is devoid of merits and the same is dismissed. No costs. Consequently, connected Mps are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

sr

To

1. Commissioner of Service Tax (Appeals)-I,
26/1, M.G. Marg, Nungambakkam,
Chennai - 600 034

2. Additional Commissioner of Service Tax,
Service Tax II Commissionerate,
" Newry Towers, 3rd Floor,
2054-I, 2nd Avenue,
Anna Nagar, Chennai -600 040

1 cc to Mr.A.P. Srinivas, Advocate, Sr. 10843

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