IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM:

THE HONOURABLE THIRU.JUSTICE RAJIV SHAKDER
AND
THE HONOURABLE THIRU.JUSTICE R. SURESH KUMAR

C.M.A.No.1654 of 2017
and
C.M.P.No. 8798 of 2017

M/s. South India Corporation Ltd.,
Rep.by its Authorised Signatory
Shri SV Raamaswamee
Rani Seethai Hall, 6th Floor
Anna Salai, Chennai-600 002. ... Appellant

Vs.

The Commissioner of Service Tax
Newry Towers,
Anna Nagar,
Chennai - 600 040. ... Respondent

PRAYER: This Civil Miscellaneous Appeal filed under Section 35 G of the Customs and Excise Act, 1996, to set aside the Final Order No.40455/2017, dated 6.3.2017 in Appeal No. ST/164/2008-DB, on the file of the Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench Chennai

For Appellant : Mr. S. Krishnanandh

JUDGEMENT

1. This is an appeal preferred by the assessee against the Judgment and Order, dated 06.03.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (in short, 'the Tribunal').

2. The Tribunal has disposed of the statutory Appeal via, a cryptic order, which reads thus :

> " None appeared for the appellant although opportunity has been granted issuing notice on 09.02.2016 fixing the date of hearing for today.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. Revenue supports the adjudication.

3. Perusal of para 9 of the adjudication order specifically brings out that the appellant has collected service tax but not deposited into the Treasury. There is no explanation from the appellant against such default. Law being well settled that no one should be enriched at the cost of the State, appeal is dismissed."

3. A perusal of the order would show that the Tribunal proceeded to pass the aforementioned order since, there was no appearance on behalf of the appellant although opportunity was granted in that behalf via, notice dated 09.02.2016. It has been averred by the appellant that the impugned order wrongly records, that none appeared for the appellant on the date fixed for hearing.

4. Mr.Krishnanandh's contention before us is that the appellant via its standing counsel had made a request for adjournment so that the main counsel could remain present to prosecute the appeal on merits, albeit, on another day.

5. As a matter of fact, in the appeal, the stand taken is that the Tribunal ought to have adjourned the matter and fixed another date to hear the matter. It is the appellant's contention that because the Tribunal failed to do so, it amounted to violation of principles of natural justice.

6. In our view, this submission cannot be accepted. In any event, since, the appellant says that the proceedings of the Tribunal are not correctly reflected in the impugned order, the only remedy available to the appellant would be to approach the Tribunal by way of an appropriate application to rectify the record. Opportunity in that behalf is granted to the appellant, albeit, in accordance with law.

7. The appeal is disposed of accordingly. Consequently, pending C.M.P.No. 8798 of 2017 is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kua/ms

WEB COPY

To

The Commissioner of Service Tax
Newry Towers,
Anna Nagar,
Chennai - 600 040.

+1 cc to M/s.B.Sathish Sunder Advocate sr 42154
+1 cc to M/s.A.P.Srinivas Advocate sr 41990

C.M.A.No.1654 of 2017

sv(co)
aa13/07/2017

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/