IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 10.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.952 of 2015

The Appellate Assistant Commissioner,
Commercial Taxes Department,
Government of Puducherry,
Puducherry. ... Appellant

-Vs-

Mahesh Kumar V.K.
Proprietor: Gunasundar Enterprises,
D/No.MMCX/249,
Near Registrar Office Chokli,
Mahe, Union Territory of Puducherry. ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 23.04.2015 in W.P.No.12054 of 2015.

W.P.No.12054 of 2015 : Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari, calling for the records on the files of the respondent herein in No.732/PRR/2014-15/AAC dated 18/12/2014 quashing the same and to direct the respondent herein to admit the appeal by considering the bonafide delay of 81 days as explanation is supported by the medical certificate.

For Appellant : Mr.Harin,
Government Advocate (Pondicherry)

For Respondent : No appearance

JUDGMENT
[Judgment of the Court was made by S.MANIKUMAR, J.]

Challenge in this appeal is to an order, made in W.P.No.12054 of 2015, dated 23.04.2015, passed by the Writ Court, setting aside the order of the Appellate Assisting Commissioner (CT), Puducherry, refusing to condone the delay, on the ground that he has no jurisdiction to entertain the appeal, beyond 60 days.

2. The respondent is running the business of resale of live chicken, which is taxable at 5%, under Entry No.81A of Part A of Third Schedule, appended under Section 14 of the Pondicherry VAT Act, with effect from 01.01.2012. On the same line, assessment order, dated 22.8.2014 has been passed. Against which, the respondent has preferred an appeal on 11.12.2014, under section 47(1) of the Puducherry Value Added Tax Act, 2007, before the appellate Assistant Commissioner, along with a condone delay petition, seeking condonation of 81 days' delay. Supporting the averments for the delay, he produced medical certificate and stated that the delay is neither wilful nor wanton. However, the appellate authority, viz., Appellate Assistant Commissioner, Commercial Taxes Department, Government of Puducherry, Puducherry, has rejected the appeal, vide order, dated 18.12.2014, on the ground that he has no jurisdiction to entertain the appeal, beyond the statutory period of 60 days. The said order has been challenged in W.P.No.12054 of 2015. This Court, vide order, dated 23.04.2015, following the decision of the High Court of Allahabad, dated 12.1.2015 in Central Excise Appeal Defective No.155 of 2014 (M/s.Vibgyor Institute of Engineering and Tech. v. The Commissioner of Central Excise and Service), condoned the delay, by setting aside the order of the Appellate Assistant Commissioner and remitted the matter back to the appellate authority for deciding the appeal on merits.

3. Earlier, a Hon'ble Division Bench of this Court in R.Gowrishankar v. The Commissioner of Service Tax reported in 2016 (6) MLJ 710, held that the High Court or the Supreme Court, as the case may be, cannot direct the Appellate Authority to condone the delay, beyond the extended period of limitation. It has further held that Courts have also interpreted that when the legislative intent is reflected in the provisions of the Special Laws, excluding the provisions of Limitation Act, then the authorities under the statute, cannot exercise powers to condone the delay.

4. In a decision in M/s.Falcon Types Ltd., v. The Customs, Excise & Service Tax Appellate Tribunal, Chennai [C.M.A.No.1161 of 2016, dated 15.06.2016], a Hon'ble Division Bench of this Court, following the decisions in Indian Coffee Worker's Co-op. Society Ltd., v. Commissioner of Commercial Taxes reported in 2002 (I) CTC 406, Singh Enterprises v. Commissioner of Central Excise, Jamshedpur reported in 2008 (221) E.L.T. 163 (SC), Commissioner of Customs & Central Excise v. Hongo India (P) Ltd., reported in 2009 (236) ELT 417 (SC), Gopinath v. CESTAT, Chennai reported in 2013 (32) STR 172 (Mad.), Albert v. Commissioner of Service Tax, Chennai reported in 2015 (37) STR 187 (Mad.) and Saradha Travels v. Commissioner of Service Tax reported in 2015 (3) STR 433 (Mad.), held that the above

decisions make it abundently clear that the appellate authority, has no powers to condone the delay, beyond the extendable period.

5. Following the above decisions that the appellate authority has no power to condone the delay, beyond the extendable period, this Court is inclined to set aside the order of the Writ Court, condoning the delay, by setting aside the order of the Appellate Assistant Commissioner.

6. Hence, the Writ Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

skm

To

The Appellate Assistant Commissioner,
Commercial Taxes Department,
Government of Puducherry,
Puducherry.

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GP(CO)
CA(06/09/2017)