IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2017

CORAM :

The Hon'ble MR.JUSTICE RAJIV SHAKDHER

AND

The Hon'ble MR.JUSTICE R.SURESH KUMAR

W.A. No.276 of 2017

M/s.Days Inn Deccan Plaza (A unit of Deccan's Park)
Rep. by its General Manager, R.Gowrishankar. .. Appellant

-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 Commissionerate-2,
''Newry Towers'' 3rd Floor, 2054-I,
2nd Avenue, Anna Nagar, Chennai 600 040. .. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order of this Court dated 30.09.2016 passed in W.P.No.26310 of 2016.

Writ Petition Filed order Article 226 of the Constitution of India for a writ of certiorarified Mandamus, to call for the records of the 2nd respondent order in original No.114/2010 dated 29.10.2010 and quash the same and further direct the 2nd respondent to pass a fresh order.

For Appellant : Mr.P.Ayyamperumal

For Respondents : Mr.A.P.Srinivas

* * * * *

J U D G M E N T

(Judgment of the Court was delivered by Rajiv Shakdher, J.)

1.This is an appeal preferred against the order dated 30.09.2016, passed in W.P.No.26310 of 2016 by the learned Single Judge.

2.This is the second round of litigation. The first round terminated with the judgment of the Division Bench dated 13.06.2016, passed in W.A.No.589 of 2016.

3.The litigation to this Court commenced with the passing of the order-in-original dated 29.10.2010, which was assailed by the appellant before the Commissioner of Service Tax (Appeals) [in short 'CST (A)'], after the period of limitation had expired. There was a delay of nine (9) months in filing the appeal before the CST (A). Consequently, the CST (A) dismissed the appeal vide order dated 01.12.2014, as it was preferred beyond the period of limitation prescribed under Section 85 of the Finance Act, 1994 (in short 'the Act').

3.1.Admittedly, thereafter, for a period of one (1) year, no steps were taken to assail the order of the CST (A). Consequently, the Department issued two recovery notices dated 08.12.2015 and 08.01.2016, pertaining to two separate Show Cause Notices (SCNs).

3.2.This propelled the appellant to prefer a writ petition in this Court. The said writ petition was filed on 27.01.2016, and was, numbered as : W.P.No.5194 of 2016. In the writ petition, the appellant assailed the order of the CST (A) dated 01.12.2014. The learned Single Judge, however, dismissed W.P.No.5194 of 2016 vide order dated 22.02.2016.

3.3. Against this dismissal, the appellant preferred an appeal to the Division Bench, as is indicated hereinabove. The Division Bench, we are told by Mr.Srinivas, Advocate, who appears on advance notice on behalf of the respondent, dismissed the appeal vide order dated 13.06.2016. While dismissing the appeal, the Division Bench, evidently, observed that the limitation prescribed under Section 85 of the Act could not be extended by the Court, while exercising jurisdiction under Article 226 of the Constitution.

3.4. Admittedly, the judgment of the Division Bench was not assailed by the appellant.

3.5. These aspects are not disputed by the counsel for the appellant.

4. The record shows that the appellant, at this juncture, chose to assail, for the first time, the order-in-original dated 29.10.2010 by preferring, yet again, a writ petition under Article 226 of the Constitution. This writ petition is numbered as : W.P.No.26310 of 2016. The learned Single Judge has, as indicated at the outset, vide the impugned order dated 30.09.2016, dismissed the writ petition. It is, in these circumstances, that the present appeal has been preferred before us.

5.Mr.Ayyamperumal, who appears in support of the appeal, assails the order of the learned Single Judge on the following grounds:

(i).The learned Single Judge failed to appreciate that the order-in-original was passed in breach of principles of natural justice.

(ii).That the learned Single Judge failed to appreciate that the ratio of the judgment of the Supreme Court in the case of : Nizam Sugar Factory vs. Collector of Central Excise, A.P., (2006) 197 ELT 465 (SC).

(iii).That the order of the CST (A) could not have merged with the order-in-original, as held by learned Single Judge, since, there was no decision on merits.

(iv).That the learned Single Judge has, incorrectly, noted that the second respondent had not observed that half-yearly returns had not been filed. The submission being that the observation was contrary to the record. In this connection, our attention was drawn to paragraph 4 of the order-in-original.

6. We have heard the learned counsel for the parties and perused the record.

7. According to us, the decision reached by the learned Single Judge via the impugned order cannot be faulted, even while we may have a different perception with regard to some of the reasons set out therein.

7.1. The fact remains that the appellant chose to take recourse to an appellate remedy against the order-in-original, albeit, after the prescribed period of limitation had expired.

7.2. The Division Bench, in the earlier round, vide its order dated 13.06.2016, passed in W.A.No.589 of 2016, had clearly indicated that limitation could not be extended by a Court, while exercising jurisdiction under Article 226 of the Constitution. The appellant, as noticed above by us, did not assail the judgment of the Division Bench.

7.3. The appellant, in this round, seeks to challenge the order-in-original, which, according to us, cannot be permitted. The reason being, if, we were to agree with the appellant, and thereupon proceed to quash the order-in-original, it would leave the order of the CST (A) untouched, as, even according to him, the order-in-original did not merge with the order of the CST (A). Furthermore, it could also, potentially, result in a very peculiar situation, which is, that by a side-wind, we would have emasculated the judgment of the Division Bench rendered in the first round of its efficacy.

7.4. It is settled law that statutory forums and/or Courts, can and/or do decide matters both rightly and wrongly, albeit, within the limits of their respective jurisdictions. Erroneous orders of statutory forums and/or courts can only be corrected by a procedure known to law. The relevant observations made by the Supreme Court in this behalf in Ujjam Bai V. State of U.P., AIR 1962 SC 1621, at pages 1629 to 1631 (paragraphs 15 to 17), being opposite, are extracted hereunder :

> ".... 15. ..... Whenever a judicial or quasi-judicial tribunal is empowered or required to enquire into a question of law or fact for the purpose of giving a decision on it, its findings thereon cannot be impeached collaterally or on an application for certiorari but are binding until reversed on appeal. Where a quasi-judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion, whether it is wrong in law or in fact. .... A tribunal may lack jurisdiction if it is improperly constituted, or if it fails to observe certain essential preliminaries to the inquiry. But it does not exceed its jurisdiction by basing its decision upon an incorrect determination of any question that it is empowered or required, (i.e., has jurisdiction) to determine. The strength of this theory of jurisdiction lies in its logical consistency. .... The characteristic attribute of a judicial act or decision is that it binds, whether it be right or wrong. An error of law or fact committed by a judicial or quasi-judicial body cannot, in general, be impeached otherwise than on appeal unless the erroneous determination relates to a matter on which the jurisdiction of that body depends. These principles govern not only the findings of inferior courts strito sensu but also the findings of administrative bodies which are held to be acting in a judicial capacity. Such bodies are deemed to have been invested with power to err within the limits of their jurisdiction; and provided that they keep within those limits, their decisions must be accepted as valid unless set aside on appeal. ......
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> 16. In Malkarjun V. Narhari, (1901) ILR 25 Bom 337 (P.C.), the Privy Council dealt with a case in which a sale took place after notice had been wrongly served upon a person who was not the legal representative of the judgment-debtor's estate, and the executing court had erroneously decided that he was to be treated as such representative. The Privy Council said :
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> > "In so doing the Court was exercising its jurisdiction. It made a sad mistake, it is true; but a Court has jurisdiction to

> decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right; and if that course is not taken the decision, however wrong, cannot be disturbed" (page 347).

17. The above view finds support from a number of decisions-of this Court.

1. Aniyoth Kunhamina Umma V. Ministry of Rehabilitation, AIR 1962 SC 1616. .... This Court dismissed the petition observing :

> "We are basing our decision on the ground that the competent authorities under the Act had come to a certain decision, which decision has now become final the petitioner not having moved against that decision in an appropriate court by an appropriate proceeding. As long as that decision stands, the petitioner cannot complain of the. infringement of a fundamental right, for she has no such right". ...."
>
> (emphasis is ours)

7.5. In the light of the said principles, one has to see as to whether the submissions raised by the learned counsel for the appellant, which have been recorded in paragraph 5 above, can be considered by us, at this stage.

7.5. A perusal of the grounds, on which, the order of the learned Single Judge has been assailed would show that except for the first ground, which is adverted to in paragraph 5(i) above, all others are errors, if at all, are errors of law or fact.

7.6. In so far as the first ground is concerned, that is, the order-in-original was passed in breach of principles of natural justice, we can only state that, if, this assertion is correct, it is an error pertaining to jurisdiction, which could have, perhaps, been corrected, if, appropriate timely steps had been taken by the appellant, which could include a remedy by way of a petition filed under under Article 226 of the Constitution. The appellant, by his own conduct, as is evident from the narration of facts above, has allowed the order-in-original to remain intact. With the Division Bench passing an order in the earlier round, the order-in-original has attained finality; which, as indicated above, cannot be disturbed by us, in what is a second round of litigation.

8.Therefore, in our view, at this point in time, after more than six years have expired, the appellant cannot be permitted to challenge the order-in-original via the present proceedings.

9.Accordingly, the Writ Appeal is dismissed, leaving the parties to bear their own costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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 Commissionerate-2,
''Newry Towers'' 3rd Floor, 2054-I,
2nd Avenue, Anna Nagar, Chennai 600 040.

+1 cc to Mr.P.Ayyamperumal, advocate,sr.16362

+1 cc to Mr.A.P.Srinivas,advocate,sr.16270.

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krd 13/4

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