IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.12466 of 2017
and
W.M.P.No.13247 of 2017

M/s.Aqua Base Container Services,
rep.by Mr.A.Manoharan, Proprietor,
61/2B, Ennore Express Road,
Thiruvottiyur,
Chennai-600 019. .. Petitioner

Vs

1.The Commissioner (Appeals-I),
Office of the Commissioner of Service Tax (Appeals-I),
Newry Towers, 12th Main Road,
Anna Nagar, Chennai-600 040.

2.The Assistant Commissioner of Service Tax,
Range-A, Division-I,
Service Tax Commissionerate-I,
Anna Nagar West, Chennai-600 040.
(R-2 impleaded as per order dated 12.06.2017
in W.M.P.No.15490 of 2017 in W.P.No.12466/2017) .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the respondent in Proceedings Order in Appeal No.254/2016 (STA-I) dated 27.04.2016 in A.No.559/2012 (MST) dated 07.09.2012 and quash the same.

For Petitioner : Mr.S.Joseph Prabakar

For Respondents : Mr.A.P.Srinivas,
Senior Standing Counsel

ORDER

Heard Mr.Joseph Prabakar, learned counsel for the petitioner and Mr.A.P.Srinivas, Sr.Standing Counsel appearing for the Revenue.

2.By consent of the learned counsel on either side, the main writ petition itself is taken up for final disposal.

3.The petitioner has challenged the order passed by the first respondent under order in Appeal No.254/2016 dated 27.04.2016. As against the order impugned, the petitioner has a right of appeal before the Customs, Excise and Service Tax Appellate Tribunal ("Tribunal" in short) and without availing the said remedy, the petitioner is before this Court. Therefore, at the very threshold, this Court called upon the petitioner to explain as to why the petitioner has not availed the alternative remedy. In reply to that, the learned counsel for the petitioner would state that on account of the peculiar facts and circumstances of the case, this writ petition has to be entertained by this Court as he challenged the impugned order on the ground other than the merits of assessment. In the light of the said submission, this Court heard the learned counsel for the petitioner as well as the learned counsel for the revenue.

4.The petitioner filed an appeal before the first respondent as against the order of assessment passed by the second respondent relating to demand of service tax under the head "Maintenance or Repair Services". The petitioner was issued with two show-cause notices dated 18.10.2010 and 09.09.2011, and in spite of the objections raised by the petitioner, the demands were confirmed. Along with the appeal petition, the petitioner filed a miscellaneous petition for grant of stay of the order in original dated 28.02.2012, a petition to condone the delay in filing the appeal as well as the appeal petition. The first respondent, by order dated 21.01.2013 in the stay petition, taking note of the fact that the petitioner had already paid a sum of Rs.7.25 lakhs, directed the petitioner to pre-deposit a sum of Rs.14 lakhs within a time frame. According to the petitioner, he has complied with the said condition and remitted the said sum of Rs.14 lakhs and also remitted a sum of Rs.41,43,127/- on various dates. The first respondent, while considering the appeal, in paragraph-6 of the order, has come to the conclusion that the petitioner has not complied with the pre-deposit issue. This appears to be a factual error as the demand of Rs.14 lakhs as ordered by the first respondent was paid through banking channel. Therefore, the conclusion arrived at in paragraph-6 of the first respondent requires interference.

5.The next aspect to be considered is whether the first respondent was justified in dismissing the appeal filed by the petitioner as being time-barred. In terms of the statute, the petitioner is required to file the appeal within a period of three months from the date of receipt of a copy of the order in original. The appellate authority has been granted a further period of three months within which period, he can exercise his discretion to condone the delay in filing the appeal. Admittedly, the present appeal petition is filed within the condonable period, as the delay is 2 months and 28 days, and the petitioner has filed the application stating that papers were misplaced by the counsel who was attached to the counsel for the appellant and only on 06.09.2012, the papers were recovered and thereafter the counsel assisted in preparing the appeal and therefore, there was a delay. There is nothing on record to show that the cause shown by the petitioner is false. Furthermore, the law of limitation is not intended to defeat the rights of parties except those who are adopting dilatory tactics or purposely evading the proceedings. The present case is not one such case. Misplacing of papers appears to be genuine mistake and the delay also is not inordinate. If the Order-in-Original remains unassailed, the petitioner who is an assessee, would have to pay substantial amount of money. Therefore, considering that the period of delay is not inordinate and within the condonable period, it can be condoned so that the matter could be adjudicated on merits. Hence, this Court is inclined to exercise its discretion in the matter and condone the delay. Accordingly, the writ petition is allowed and the impugned order dated 27.04.2016 is set aside, the delay in filing the appeal before the first respondent is condoned and the appellate authority is directed to register the appeal, hear the petitioner and pass a reasoned order on merits and in accordance with law.

6.The writ petition is allowed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

KM
To
1.The Commissioner (Appeals-I),
Office of the Commissioner of Service Tax (Appeals-I),
Newry Towers, 12th Main Road,
Anna Nagar, Chennai-600 040.

2.The Assistant Commissioner of Service Tax,
Range-A, Division-I,
Service Tax Commissionerate-I,
Anna Nagar West, Chennai-600 040.
+1cc to Mr.A.P.Srinivas,Advocate sr.46769
+1cc to Mr.Joseph Prashakar,Advocate sr.46333

W.P.No.12466 of 2017 and
W.M.P.No.13247 of 2017

ss(17/7/2017)