THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

Writ Petition No.9473 of 2017

DATED:06-11-2017

Between:

The Greater Visakhapatnam Municipal Corporation
Rep. by its Commissioner
Visakhapatnam … Petitioner

And

The Customs, Excise and Service Tax
Appellate Tribunal
South Zonal Bench
Bangalore
Rep. by its Registrar
and others … Respondents

COUNSEL FOR THE APPELLANT: Mr. S. Lakshminarayana Reddy

COUNSEL FOR THE RESPONDENTS: Mr. B. Narasimha Sarma,
Senior Standing Counsel
for Income Tax Department

THE COURT MADE THE FOLLOWING:

<u>ORDER:</u> *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

The petitioner - Greater Visakhapatnam Municipal Corporation (GVMC) suffered an assessment order pertaining to service tax, on the income received by it towards letting out of its various immovable properties, at the hands of respondent No.3. Aggrieved by the same, it has filed an appeal before respondentNo.2. By order dt.21.3.2013, respondent No.2 held that under Section 85(3) of the Finance Act, 1994 (for short, "the Act"), the appeal ought to have been filed on or before 03.02.2012, but the same was filed on 14.3.2013, beyond the condonable period under the aforementioned provision. Respondent No.2 further held that as condonation of the delay was beyond his powers, the appeal is liable to be rejected, and he accordingly rejected the same.

2. Assailing the aforesaid order of respondent No.2, the petitioner has filed a further appeal before respondent No.1 – Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (for short, "the Tribunal"). When it was posted for hearing on 21.03.2014, counsel for the petitioner was not present before the Tribunal. However, the Tribunal dismissed the appeal following the judgment in *Singh*

Enterprises v. Commissioner of Central Excise, Jamshedpur[1] wherein it was held that the delay in filing the appeal beyond the condonable period cannot be condoned by any authority. Assailing this order, the petitioner filed this writ petition.

3. The learned counsel for the petitioner has not disputed the fact that under Section 85(3) of the Act, the appeal has to be filed within three months and, if it is filed beyond that period, the appellate authority has power to condone the delay for a period not exceeding three months. Admittedly, the delay in filing the appeal by the petitioner before respondent No.2 was beyond six months. The judgment of the Jharkhand High Court, upon which the Tribunal has placed reliance, was confirmed by the Supreme Court in *Singh Enterprises v. Commissioner of Central Excise, Jamshedpur*[2]. Interpreting the analogous provision under Section 35 of the Central Excise Act, 1944, the Supreme Court held as under:

> *"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid*

[1] 2010 (258) ELT 186 (Jhar.)
[2] 2008 (221) ELT 163 (SC)

period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to Sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

4. In the light of the legal position as discussed above, the order of respondent No.2 as confirmed by the Tribunal, does not suffer from any illegality warranting interference of this Court. The writ petition is accordingly dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P. No.11735 of 2017 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

CHALLA KODANDA RAM, J

06-11-2017

bnr