IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 39 of 2017 (O&M)
Date of decision: 01.11.2017

Director, Post Graduate Institute of Medical Education and Research, Sector 12, Chandigarh

……Appellant

Vs.

The Commissioner of Central Excise & Service Tax (Appeals), Chandigarh and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jhanji, Advocate
for the appellant.

CM No. 23967-CII-2017

1. This is an application under Section 149 read with Section 151 of the Code of Civil Procedure, 1908 for making the Court fee good and sufficient.

2. Allowed as prayed for. CM stands disposed of.

CEA No. 39 of 2017

3. This appeal has been filed under Section 83 of the Finance Act 1994(in short "the 1994 Act") against the impugned order dated 12/20-07-2016, Annexure A-5 passed by the Commissioner (Appeals), Chandigarh(II) and order dated 11.04.2017 (Annexure A-7) passed by Central Excise & Service Tax Appellate Tribunal, Chandigarh (in short, "the Tribunal") in

Appeal No. JAL-EXCUS-000-APP-017-16-17, claiming following substantial questions of law:-

i) Whether in the facts and circumstances of the case, the impugned orders Annexures A/5 and A/7 are liable to be set aside?

ii) Whether the respondents are justified in not considering the submissions and documents and law produced by the appellant?

iii) Whether the courts below are justified in dismissing the appeal despite the fact that the appellant had explained the reason for delay in filling the appeal?

iv) Whether the courts below are justified in dismissing the case without going through the merits of the case, despite the fact that the delay was neither intentional nor mala-fide?

v) Whether the learned lower Court can ignore the findings given by the Apex Court in other similar cases?

vi) Whether the impugned orders are liable to be set aside being arbitrary and against law?

4. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant i.e Director of PGIMER, Chandigarh is registered with the respondent department for providing renting of immovable property service under Section 65 of 1994 Act and is paying the service tax. Additionally, the appellant has also rented out vacant land and other multi-storied parking sites for parking of vehicles of general public for their convenience with the PGIMER. During the course of audit conducted in the year 2013 by the internal audit team of Central Excise Commissioner, Chandigarh, it was observed that during the period from 01.10.2007 to 30.11.2011, the appellant had received an amount of ₹ 99,16,329/- as rent of vacant land and ₹ 19,12,757/- as rent from multi storied parking site at Emergency Trauma Centre Block, PGIMER used for the sole

purpose of parking for general public. Respondent No.2 i.e is Joint Commissioner(Prev.) vide letter dated 19.03.2013, Annexure A.1, issued show cause notice to the appellant stating that it did not pay the service tax amounting to ₹ 12,88,022/- due for the period from 2007-08 to 2011-2012. Respondent No. 2 further requested the appellant to provide all the details of the amount received on account of rent from the parking sites. The appellant replied that the services provided by it were not liable to service tax in context of Section 65(105)(zzzz) of Chapter V of 1994 Act and renting of land used for parking services did not fall in the ambit of service tax. After going through all the documents provided by the appellant, vide order dated 31.12.2013, Annexure A.3, the Joint Commissioner(Prev.) imposed service tax liability amounting to ₹ 2,27,590/- on the appellant. Aggrieved against the order dated 31.12.2013, the appellant filed an appeal before respondent No.2 i.e. the Commissioner of Central Excise and Service Tax (Appeals) [Commissioner (Appeals)] on 30.06.2014. According to the appellant, it had already paid the service tax amount vide challan dated 31.05.2014. The appellant claims that as there was delay in filing the appeal under Section 85 (3A) of the 1994 Act, the appellant also filed a letter of condonation of delay alongwith the appeal to respondent No.1. Vide order dated 12/20.07.2016, Annexure A.5, respondent No.1 dismissed the appeal filed by the appellant on the ground of delay. The appellant went in appeal before respondent No.3 i.e. the Tribunal on 19.10.2016. Vide order dated 11.04.2017 (Annexure A-7), the Tribunal also dismissed the appeal on the ground of delay. According to the appellant, it is an autonomous body under the Act of Parliament (controlled and managed by the Ministry of Health and Family Welfare, Government of India). It involves many paper formalities and, thus, the delay had occurred in filing the appeal. Hence, the instant appeal before this Court by the appellant.

5. We have heard the learned counsel for the appellant.

6. Admittedly, the appellant-the PGIMER is providing renting of immovable property service under Section 65 of the 1994 Act and is paying service tax accordingly. During the course of audit, it was found that the appellant had received an amount of ₹ 99,16,321/- as rent of vacant land and ₹ 19,12,757/- as rent from multi-storied parking site at Emergency Trauma Centre Block, PGIMER used for the purpose of parking for general public. A show cause notice was issued to the appellant on 19.03.2013 to the effect that it did not pay the service tax amounting to ₹ 12,88,022/- for the period from 2007-08 to 2011-12. The appellant submitted its reply contending that it was not liable to service tax as renting of land for parking services did not fall in the ambit of service tax. After considering the submissions made by the appellant, service tax liability amounting to ₹ 2,27,590/- was imposed on the appellant vide order dated 31.12.2013 by the Assessing Officer. Against the said order, the appellant filed an appeal before the Commissioner (Appeals) on 30.06.2014 after a delay of more than three months. Section 85(3A) of the 1994 Act mandates that appeal has to be filed on or before two months from the date of receipt of the order. However, Proviso thereto provides that the Commissioner (Appeals) may for sufficient cause to be shown by the appellant entertain an appeal by condoning the delay where appeal is filed within next one month. The relevant provision of Section 85(3A) of the 1994 Act reads thus:-

> **"Section 85. Appeals to the Commissioner of Central Excise (Appeals)-**

> 3(A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter.
>
> Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month."

Vide order dated 12/20.07.2016, the Commissioner (Appeals) dismissed the appeal on the ground of delay as the same could be filed within a total period of three months from the date of receipt of the order including the period of condonation of delay of one month. Further appeal by the appellant before the Tribunal also met with the same fate. It has been categorically recorded by the Tribunal in its order dated 11.4.2017 (Annexure A-7) that the appeal had been filed before the Commissioner (Appeals) after a period of more than three months from the date of receipt of certified copy of the order. Reliance was placed on the decision of the Apex Court in ***Singh Enterprises Vs. CCE Jameshpur***, 2008(221) ELT 163 holding that statutory authorities can allow appeal within the time granted by the statute and not beyond. Thus, it was rightly concluded that the appeal was liable to be dismissed. Learned counsel for the appellant has not been able to point out any error or illegality in the order passed by the Tribunal.

7. The issue with regard to the condonation of delay beyond the period specified in the statute in filing appeal has already been decided by a Full Bench of this Court in ***State of Haryana Vs. Hindustan Machine Tools Ltd.,*** 2014 (4) RCR(Civil) 1040, wherein it was held that wherever the extent

of condonable period is specifically prescribed by a statute, it would not be appropriate even under Articles 226/227 of the Constitution of India to entertain the writ petition so as to breach the express provision in the statute and act contrary to the mandate of the legislature. It was further recorded that it is for the legislature to prescribe the limits or not to do so for condoning the delay and exercise of extraordinary writ jurisdiction under Articles 226/227 of the Constitution of India would amount to doing violence to the statutory provisions and rendering the same otiose. The relevant observations recorded by the Full Bench read thus:

> "The power conferred under Articles 226/227 is designated to effectuate the law, to ensure that rule of law is enforced and the statutory authorities and other organs of the State act in accordance with law. It is not to be invoked whereby authorities are directed to act contrary to law. Wherever, the extent of condonable period is specifically prescribed by a statute, it would not be appropriate even under Articles 226/227 of the Constitution to entertain the writ petition so as to breach the express provision in the statute and act contrary to the mandate of the legislature. It is for the legislature to prescribe the limits or not to do so for condoning the delay. Exercise of extraordinary writ jurisdiction under Articles 226/227 of the Constitution of India would amount to doing violence to the statutory provision and rendering the same otiose. In other words, the legislative intent is clear that the Parliament never intended that delay beyond specified period in filing the appeal could be condoned. It is not for the High Court to re-write the statute in the grab of exercise of its jurisdiction under Articles 226/227 of the Constitution. The view which has been expressed by us herein above, is supported by various judicial precedents."

8. Further in ***Patel Brothers Vs. State of Assam and others,*** (2017) 2 SCC 350, it has been held by the Apex Court that condonation of delay by

invoking Section 5 of the Limitation Act, 1963 when such delay is beyond the prescribed period, is not permissible.

9. In view of the above, we do not find any ground to interfere with the order dated 11.4.2017, Annexure A.7 passed by the Tribunal, upholding the order passed by the Commissioner (Appeals) whereby the appeal filed by the appellant was dismissed on the ground of delay. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

November 01, 2017
'gs'

(Amit Rawal)
Judge

Whether speaking/reasoned **Yes**
Whether reportable **Yes**