IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.08.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.20219 of 2018
and
W.M.P.No.23686 of 2018

Sutherland Global Services Pvt.Ltd.
Represented by Associate
Vice President Finance
Mr.V.N.Achutarama Gupta
45A, Velachery Main Road, Velachery,
Chennai - 600 042. .. Petitioner

Vs.

1. Assistant Commissioner of Service Tax,
Office of the Assistant Commissioner
of Service Tax III Division,
Service Tax III Commissionerate,
Newry towers, Plot No.2054, II Avenue,
Anna Nagar,
Chennai - 600 040.

2. The Commissioner (Appeals)
Office of the commissioner
of GST & Central Excise (Appeals-II)
Newry towers, 2054/1, II Avenue,
12th Main Road,
Anna Nagar,
Chennai - 600 040. ..Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to file C.No.IV/09/186/2013-STC-Adj. In order in Original No.01/2017-18 dated 25.01.2017 passed by the First respondent and the consequential order in Appeal No.59/2018 (CTA-II) dated 28.02.2018 passed by the second respondent in A.No.150/2017 (STA-1) (STA-III) dated 21.04.2017 and quash both the orders as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondents: Mrs.R.Hemalatha,
Senior Standing Counsel

O R D E R

Mrs.R.Hemalatha, learned Senior Standing Counsel takes notice for the 1st and 2nd respondents and by consent the main Writ Petition itself is taken up for final disposal.

2. This Writ Petition is filed challenging the order in original dated 25.01.2017 passed by the first respondent and the Order in Appeal dated 28.02.2018 passed by the second respondent.

3. Heard Mr.Joseph Prabakar, learned counsel appearing for the petitioner and Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the respondents.

4. The petitioner is stated to have engaged in the business of Business Process Outsourcing and rendering services to clients based out of USA and UK. It is stated that the petitioner is a subsidiary of Sutherland Global Services Inc., USA. The petitioner was issued with a show cause notice dated 05.06.2013 proposing to demand differential service tax amount from 10.3% to 12.36% with interest. The first respondent, thereafter, after following due process of law, passed the impugned order-in-original dated 25.01.2017 confirming the demand of tax and interest, apart from levying penalty as well. There is no dispute to the fact that as against the order of Adjudicating Authority, a statutory appeal remedy lies before the Commissioner of Appeal, being the Appellate Authority and such Appeal has to be filed within 60 days from the date of receipt of a copy of the order in original. The petitioner filed an appeal before the second respondent, however, with a delay of 13 days. The petitioner explained the delay in their application for condonation of delay, filed before the second respondent. It is stated in the said application that person in charge of handling the service tax matter in the petitioner Company, quit the company and that the said person who had received the order in original had misplaced the same. It is also stated that the newly appointed person who handled the service tax matters subsequently discovered that the appeal against the order in original was not filed. Therefore, the petitioner filed the Appeal with a delay of 13 days.

5. The Appellate Authority, however, refused to entertain the Appeal only on the reason that the same was filed beyond the period of limitation and the explanation given by the petitioner is not satisfactory. Thus, he rejected the Appeal on the ground of limitation, without going into the merits of the matter. Now, both the orders are put to challenge before this Court.

6. Perusal of the order passed by the first respondent, being the Adjudicating Authority would indicate that the same was passed by giving certain reasonings and findings in an elaborate manner. This Court, at this stage, is not inclined to go into such reasonings and findings of the Adjudicating Authority, since the correctness or otherwise of such reasonings and findings is to be gone into and decided by the next fact finding authority, namely, the Appellate Authority. It is well settled that in fiscal matters, entertaining the Writ Petition as against the order of adjudication is not permissible as the statutory Appellate remedy available under the relevant enactment has to be exhausted by the aggrieved party.

7. In this case, admittedly, the petitioner has filed the Appeal before the second respondent. However, as there was a delay of 13 days in filing such appeal, the second respondent refused to entertain the same. In the considered view of this Court, the order of the second respondent in rejecting the appeal only on the ground of limitation cannot be sustained, especially, when the petitioner has stated the reasons for filing such appeal with 13 days delay and when such reasons are not found to be either false or imaginary. In any event, as the delay is only 13 days, the second respondent ought to have condoned the delay and considered the matter on merits.

8. Therefore, without expressing any view on the merits of the contentions raised by the petitioner and on the order passed by the first respondent, this Writ Petition is allowed in part only by setting aside the order of the second respondent made in Appeal No.59/2018 dated 28.02.2018. Consequently, the matter is remitted back to the second respondent for deciding the said Appeal on merits and in accordance with law, as this Court has not expressed any view on the merits of the matter. Such exercise shall be done by the second respondent within a period of eight weeks from the date of receipt of a copy of this order. Consequently, miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsi

To

1. Assistant Commissioner of Service Tax,
   Office of the Assistant Commissioner of Service Tax
   III Division, service Tax III Commissionerate,
   Newry towers, Plot No.2054, II Avenue,
   Anna Nagar,
   Chennai - 600 040.

2. The Commissioner (Appeals)
   Office of the commissioner of GST & Central
   Excise (Appeals-II)
   Newry towers, 2054/1, II Avenue,
   12th Main Road,
   Anna Nagar,
   Chennai - 600 040.

+ 1 cc to M/s. Joseph Prabakar, Advocate Sr.54654
+ 1 cc to M/s. R. Hemalatha, Advocate Sr.54537

W.P.No.20219 of 2018

(CCC)
EU(28/08/2018)