IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.05.2018

CORAM

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

WA.No.1158/2018 & CMP.No.9310/2018

The Executive Officer
Kaveripattinam Selection Grade Town
Panchayat, Kaveripattinam
Krishnagiri Dsitrict 635112. .. Appellant

Versus

1.The Commissioner of Central Excise Appeals
O/o.The Commissioner of Central Excise
No.1, Foulks Compound, Anaimedu
Salem 636 001.

2.The Deputy Commissioner of Central Excise
Service Tax Cell, Hosur-I Division, Thally Road
Hosur 635 109, Krishnagiri District.

3.The Assistant Commissioner of Central Excise
Hosur-I Division, Thally Road, Hosur 635 109,
Krishnagiri District.

4.The Branch Manager
Indian Bank, Kaveripattinam Branch
No.222, Salem Main Road,
Kaveripattinam 635 112
Krishnagiri District. .. Respondents

Prayer:- Appeal filed under Clause 15 of Letters Patent against the order passed in writ petition in WP.No.7502/2018 dated 03.04.2018.

PRAYER IN WP.7502 OF 2018:

Writ Petition filed Under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st respondent to pass orders on the Appeal Petition submitted by the Petitioner Town Panchayat dated 17.01.2018 and consequently direct the 2nd respondent in C.NO.V/17/ 11/ 2015- STC-Adj dated

19.12.2016 within a time frame to be fixed by this Court.

For Appellant : Mr.G.Sankaran
For R1 to R3 : Mr.V.Sundareshwaran
Senior Panel Counsel

JUDGMENT

[Judgment of the Court was made by R.SUBRAMANIAN, J.,]

The prayer for mandamus sought for by the appellant / Panchayat to direct the Commissioner [Appeals] to dispose of the statutory appeals filed by it, challenging the levy of service tax on the services provided by the Municipality, was rejected by the learned Single Judge on two grounds, viz., [1] The Executive Officer of the Town Panchayat / appellant has accepted to pay the tax ; and [2] the appeal has been filed belatedly since there is no provision for condonation of delay.

2 We have heard Mr.G.Sankaran, learned counsel appearing for the appellant and Mr.V.Sundareswaran, learned Senior Panel counsel accepting notice on behalf of the respondents 1 to 3 and perused the materials placed before this Court.

3 Mr.G.Sankaran, learned counsel appearing for the appellant would vehemently contend that the learned Single Judge was not right in concluding that the appellant/Panchayat is estopped from questioning the levy of service tax because the then Executive Officer had made a statement that he would pay the tax. He would also rely upon the Doctrine that there is no estoppel against the statute. In the course of arguments, he would also submit that some of the services rendered by the Municipalities are exempted from service tax under the Mega Notification issued by the respondents 1 to 3. The learned counsel also contended that the learned Judge was not right in holding that the appeal is barred by limitation and the Commissioner has no power to condone the delay. He would also rely upon the earlier order dated 02.01.2018 passed in WP.No.25701/2017 [The Commissioner, Komarapalayam Municipality, Komarapalayam, Namakkal District Vs. The Commissioner [Appeals-I], Anaimedu, Salem 636 001 and 4 others] , wherein, this Court had directed the Commissioner [Appeals] to entertain the appeal which was filed belatedly.

4 Per contra, Mr.V.Sundareswaran, learned Senior Panel Counsel appearing for the respondents 1 to 3 would submit that the claim of exemption itself has no basis and in any event, the appeal being barred by time, cannot be entertained by the Commissioner [Appeals].

5 We are of the considered opinion that rejection of the claim of the appellant on the ground of estoppel cannot be sustained. As rightly pointed out by the learned counsel for the appellant that there cannot be any estoppel against statute and if it is found that some of the services, on which service tax is sought to be levied, are actually exempted from the purview of the service tax. The concession or an admission of liability by the officials cannot be a ground to reject the challenge to the very levy of the service tax.

6 We, therefore, deem it fit to direct the Commissioner [Appeals] to pass orders on the appeals filed by the appellant/Panchayat. We make it clear that it will be open to the Commissioner [Appeals] to decide the question of limitation also.

7 Hence, the writ appeal is allowed and the order of the learned Single Judge dismissing the writ petition is set aside. The Commissioner [Appeals] is directed to dispose of the appeals filed by the appellant / Panchayat within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Vacation Officer/
Deputy Registrar(AD-I)

//True Copy//

Sub Assistant Registrar

AP
To
1.The Commissioner of Central Excise Appeals
O/o.The Commissioner of Central Excise
No.1, Foulks Compound, Anaimedu
Salem 636 001.

2.The Deputy Commissioner of Central Excise
Service Tax Cell, Hosur-I Division, Thally Road
Hosur 635 109, Krishnagiri District.

3.The Assistant Commissioner of Central Excise
Hosur-I Division, Thally Road, Hosur 635 109,
Krishnagiri District.
+1cc to Mr.V.SUNDARESWARAN, Advocate, S.R.No.33755
+1cc to Mr.G.SANKARAN, Advocate, S.R.No. 33729

WA.No.1158/2018

RSK(CO)
TR(23/05/2018)