

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.04.2018
Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.7502 of 2018
and
W.M.P.No.9351 of 2018

The Executive Officer,
Kaveripattinam Selection Grade Town Panchayat
Kaveripattinam,
Krishnagiri District 635 112.

...Petitioner

Vs.

1. The Commissioner of Central Excise Appeal,
Office of Commissioner of Central Excise,
No.1, Foulks Compound,
Anaimeedu,
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

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 Petitioner : Mr.G.Sankaran

For Respondents 1 to 3 : Mr.V.Sundareswaran
Senior Panel Counsel

O R D E R

Heard Mr.G.Sankaran, the learned counsel appearing for the petitioner and Mr.V.Sundareswaran, the learned Senior Panel Counsel, accepting notice on behalf of the respondents 1 to 3. In the light of the order, this Court proposes to pass, notice to the fourth respondent is dispensed with.

2. The petitioner is an Executive Officer of Selection Grade Town Panchayat, and he seeks for a direction upon the first respondent to pass orders on the Appeal Petition, challenging the order of adjudication passed by the second respondent, dated 19.12.2016. By the said order, the second respondent has confirmed the demand of Rs.19,75,068/-, being the service tax on renting of immovable property for the period from April, 2010 to March, 2015, in terms of proviso to Section 73 (1) read with Section 73 (2) of the Finance Act, 1994, and imposed penalty of 25% of the service tax demanded.

3. From a reading of the impugned order, dated 19.12.2016, it is seen that, the Executive Officer of the Town Panchayat has not objected to the demand raised in the show cause notice and accepted to pay the same within thirty days. In this factual background, no useful purpose would be served in directing the first respondent to consider the petitioner's Appeal Petition, which is hopelessly, bared by time, as there was a delay of 365 in filing the Appeal. Admittedly, the first respondent has no power to condone such delay.

4. Therefore, the prayer sought for by the petitioner, in this Writ Petition cannot be granted. Accordingly, the Writ Petition is dismissed. However, taking into consideration that the petitioner is a Selection Grade Town Panchayat, and as of now, there is no elected body functioning and Executive Officer is in charge of the Town Panchayat, the second respondent shall grant reasonable time to enable the petitioner/Town Panchayat, to remit the service tax dues in monthly installment. To be entitled for such indulgence, the petitioner should make a representation to the second respondent, which shall be considered by the second respondent and appropriate orders be passed. If the petitioner makes an upfront payment of part of the service tax dues, as determined by the second respondent, the attachment of the petitioner's bank account shall be lifted,

as it would hamper the functioning of the Town Panchayat. The direction issued herein above shall be complied with within a period of two weeks from the date of receipt of this order. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Central Excise Appeals
Office of Commissioner of Central Excise
No.1, Foulks Compound
Anaaimedu
Salem 636 001
- 2.The Deputy Commissioner of Central Excise
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Indian Bank, Kaveripattinam Branch
No.222, Salem Main Road
Kaveripattinam 635 112
Krishnagiri District

+1 cc to M/s.G.Sankaran Advocate sr 24840
+1 cc to M/s.V.Sundareswaran Advocate sr 24959

W.P.No.7502 of 2018

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