IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2018

CORAM :

The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

W.P. No.10654 of 2018

E-H 218, Sri Senbakagiri Murugan
Powerloom Weavers Co-operative
Production and Sale Society Limited,
Rep. by its Manager, R.Palanisamy.
.. Petitioner

-vs-

1.The Assistant Commissioner of Customs
and Central Excise, Erode I Division,
No.81, Bharathi Nagar, Choolai,
Erode 638 004.

2.The Commissioner of GST & Central
Excise (Appeals), Coimbatore Circuit
Office, @ Salem Commissionerate,
No.1, Folkis Compound, Anai Road,
Salem 636 001.
.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent in A.No.171/17/ST (R), dated 16.03.2018 and quash the same and consequently, direct the 2nd respondent to entertain the appeal of the petitioner dated 22.08.2017 on merits and in accordance with law.

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For Petitioner	:	Mr.K.Karthikeyan Mr.S.Vijayakumar
For Respondents	:	Mr.V.Sundareswaran Standing Counsel

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O R D E R

Heard Mr.K.Karthikeyan, learned counsel appearing for the petitioner and Mr.V.Sundareswaran, learned counsel appearing for the respondents.

2.The petitioner is a co-operative society registered under the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and the challenge in this writ petition is to an order passed by the second respondent in Order-in-Appeal No.58/2018-ST dated 16.03.2018. The second respondent has dismissed the appeal on the ground that it is barred by limitation, as the appeal petition has been presented beyond the period prescribed under the Statute.

3.The facts are not in dispute and admittedly, the appeal has been presented beyond the prescribed period of limitation and the Commissioner of GST and Central Excise (Appeals) would have no jurisdiction to condone the delay. This aspect of the matter was taken into consideration when the case was entertained by this Court on 26.04.2018, on which date, the following order was passed:

> "Heard the learned counsel for the petitioner.
>
> 2. The petitioner is a cooperative society. The challenge is to an order passed by the second respondent dismissing the appeal filed by the petitioner society on the ground of limitation.
>
> 3. The learned counsel for the petitioner submits that due to unavoidable circumstances, the society did not prosecute the matter. However, in respect of similarly placed cooperative societies, when they approached the Commissioner of Central Excise (Appeals), Salem in Appeal Nos.199 to 203 & 206/2014-ST, he allowed the appeals and set aside the orders passed by the Adjudicating Authority by an order dated 08.10.2014. Therefore, he submits that an opportunity may be granted to the petitioner to go before the Appellate Authority, place the said order and contest the matter on merits.
>
> 4. Though the impugned order cannot be faulted, as the Commissioner of Central Excise (Appeals) has no jurisdiction to condone the delay beyond a particular limit, yet considering the fact that the petitioner is a cooperative society and they claim that an identical issue has been decided in favour of other cooperative societies, this Court will consider as to what relief

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is to be granted to the petitioner in this writ petition.

5. In the light of the above, the first respondent is directed not to take any coercive steps against the petitioner for recovery of service tax pursuant to the order passed by him on 11.6.2014. Mr.V.Sundareswaran, learned Senior Standing Counsel accepts notice for the respondents. List on 21.6.2018.

4.The learned counsel for the respondents, on instructions, would submit that it is true that the Commissioner of Central Excise (Appeals), Salem, in Appeal No.199 to 203 and 206 /2014-St, has allowed and set aside the orders passed by the Adjudicating Authority, by an order dated 08.10.2014 in respect of the same issue filed by other Co-operative Societies. If this is the factual position, then this Court is of the view that the petitioner should not be non-suited and the interest of the Society should not be prejudiced on a technical ground. However, the Court makes it clear that this order should not be treated as a precedent by any other person.

5.Hence, for the above reason, the writ petition is allowed, the impugned order is set aside and the delay in filing the appeal petition is condoned and the second respondent is requested to take the appeal petition and decide the same on merits. While hearing the appeal petition, the second respondent shall take note of the order dated 08.10.2014 passed in Appeal Nos.199 to 203 and 206/2014-ST and since it is stated that the said order would also cover the petitioner society, the benefit be extended to the petitioner. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sra

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To

1.The Assistant Commissioner of Customs
and Central Excise, Erode I Division,
No.81, Bharathi Nagar, Choolai,
Erode 638 004.

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2.The Commissioner of GST & Central
Excise (Appeals), Coimbatore Circuit
Office, @ Salem Commissionerate,
No.1, Folkis Compound, Anai Road,
Salem 636 001.

+1cc to Mr.K.Karthikeyan, Advocate, S.R.No.45648
+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.45858
+1cc to Mr.Aboul Saleem, Advocate, S.R.No.47464

W.P.No.10654 of 2018

CNR(CO)
GSP(26/07/2018)

HIGH COURT OF JUDICATURE MADRAS
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