In the High Court of Judicature at Madras

Dated : 03.1.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.34001 of 2017 & WMP.No.37715 of 2017

Academy of Maritime Education &
Training Trust, rep.by its Managing
Trustee Mrs.Susheela Ramachandran ...Petitioner

Vs

The Commissioner of Service Tax
(Appeals-I), Newry Towers,
No.2054-I, II Avenue, Anna Nagar,
Chennai-40. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in A.No.402/2016 (STA-I) (ST-I) dated 03.10.2016 in Order in Appeal No.79/2017 (CTA-I) dated 21.8.2017 passed by the respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabhakar
For Respondent : Mr.K.S.Ravi, SSC

ORDER

Mr.K.S.Ravi, learned Senior Standing Counsel accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has challenged the order passed by the respondent in Order in Appeal No.79/2017 (CTA-I) dated 21.8.2017, by which, the appeal filed by the petitioner challenging the Order in Original bearing No.73/2016 (ST-1) dated 29.2.2016 was dismissed as time barred.

3. The following facts would be sufficient to take a decision as to what relief the petitioner would be entitled to in this writ petition :

The Order in Original was passed on 29.2.2016 by the Joint Commissioner of Service Tax, ST-I Commissionerate and the order was issued on 29.4.2016 and received on 06.6.2016. The petitioner had 60 days' time to file an appeal before the Appellate Authority and the period of 60 days expired on 05.8.2016. Beyond the said period, the Appellate Authority has got power to condone the delay only upto 30 days, which also expired on 04.9.2016. It is seen that the petitioner filed the appeal on 06.7.2016 along with the pre-deposit challan of 10% of the disputed tax, which was remitted by the petitioner much prior to the filing of the appeal i.e. on 01.7.2016.

4. However, the mistake committed by the petitioner is that the appeal petition was presented before the wrong forum i.e. instead of filing the appeal in the office of the respondent, the appeal was filed in the office of the Commissioner of Central Excise and Service Tax (Appeals), Large Tax Payers Unit, which is also in the same building complex. On realizing the mistake, their counsel represented before the office of the Commissioner of Central Excise and Service Tax (Appeals), Large Tax Payers Unit either to return the appeal papers or to forward the same to the respondent for consideration.

5. However, only on 03.10.2016, the office of the Commissioner of Central Excise and Service Tax (Appeals), Large Tax Payers Unit forwarded the appeal papers to the respondent. From the communication sent by the office of the respondent, it is seen that the appeal petition has been entertained and assigned Appeal No.402/2016 and that the petitioner was granted an opportunity of personal hearing, which appears to have been held on 06.4.2017, 18.4.2017 and 16.8.2017. It is stated that on 16.8.2017, the learned counsel for the petitioner made submissions on the merits of the matter. However, by the impugned order, the respondent dismissed the petitioner's appeal as time barred by reckoning the date of filing of the appeal as 03.10.2016 and holding that the appeal has been filed beyond the condonable period of limitation as provided under Section 85 of the Finance Act, 1994.

6. From the above facts, it is clear that the petitioner effected the pre-deposit on 01.7.2016, which is admittedly within the period of 30 days from the date, on which, the petitioner received the copy of the Order in Original. That apart, the appeal was filed on 06.7.2016 before the wrong forum. What is important to note is that the office of the respondent as well as the office of the Commissioner of Central Excise and Service Tax (Appeals), Large Tax Payers Unit are situated within the same building complex and the petitioner's case is that it is an inadvertent mistake in filing the appeal before the office of the Commissioner of Central Excise and Service Tax (Appeals), Large Tax Payers Unit. The stand taken by the petitioner stood vindicated after the office of the Commissioner of Central Excise and Service Tax (Appeals), Large Tax Payers Unit realized that the appeal has been presented before the wrong forum and

hence, forwarded the same to the respondent. Thus, for all practical purposes, the date of filing should be taken as 06.7.2016. If the same is reckoned, the appeal is well within the period of limitation.

7. For all the above reasons, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent to decide the appeal on merits and in accordance with law after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rs
To
The Commissioner of Service Tax (Appeals-I),
Newry Towers, No.2054-I, II Avenue, Anna Nagar,
Chennai-40.

+1 cc to Mr.K.Ravi Advocate sr725
+1 cc to Mr.Joseph Prabhakar Advocate sr 332

WP.No.34001 2017 and
WMP.No.37715 of 2017

aa24/01/2018