IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.25701 of 2017
and W.M.P.Nos.27114 and 27115 of 2017

The Commissioner,
Komarapalayam Municipality,
Komarapalayam - 638 183,
Namakkal District.

.. Petitioner

Vs.

1.The Commissioner (Appeals-I),
Office of Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Medu, Salem - 636 001.

2.The Joint Commissioner of Central Excise,
Office of Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Medu, Salem - 636 001.

3.The Assistant Commissioner of Central Excise,
Erode - II Division, No.81, Bharathi Nagar,
Soolai, Erode - 638 004.

4.The Superintendent of Central Excise,
Komarapalayam Range at Erode,
Erode.

5.The Branch Manager,
State Bank of India,
Komarapalayam Branch,
Komarapalayam, Namakkal District.

5.The Branch Manager,
Canara Bank,
Komarapalayam Branch,
Komarapalayam, Namakkal District.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the impugned proceedings issued by the 2nd respondent in C.No.V/RIP/30/34/2014-ST.Adj dated 18.12.2014 as confirmed by the order of the 1st respondent in A.No.195/2015-ST dated 30.10.2015 and the consequential proceedings issued by the 3rd respondent in C.No.IV/16/36/2017-S.Tax (Arrear) dated 11.09.2017 addressed to 5th respondent and in C.No.IV/16/36/2017-S.Tax (Arrear) dated 12.09.2017 addressed to 6th respondent and to quash the same.

For Petitioner : Mr.G.Sankaran

For Respondents: Mr.V.Sundareswaran
Senior Standing Counsel (For R1 to R4)
Mr.K.Chandrasekaran (For R5)

ORDER

Heard Mr.G.Sankaran, learned counsel for the petitioner and Mr.V.Sundareswaran, learned Senior Standing Counsel for the respondents 1 to 4 and Mr.K.Chandrasekaran, learned counsel for the 5th respondent. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner is a Municipality, namely, Komarapalayam Municipality which had obtained service tax registration on 22.02.2008. In this writ petition, the petitioner Municipality has challenged the order-in-original passed by the second respondent dated 18.12.2014 as confirmed by the first respondent dated 30.10.2015 and the consequential demand notices. By the impugned order dated 18.12.2014 passed by the second respondent, the demand for service tax under Section 73(2) of the Finance Act, 1994 for the period from 01.06.2007 to 31.03.2013 was confirmed apart from demand for interest and penalty. The impugned order passed by the second respondent is stated to have been received by the petitioner Municipality on 22.12.2014. As against the order passed by the second respondent, the petitioner has appellate remedy before the first respondent and such an appeal ought to have been filed within a period of sixty days from the date of receipt of the copy of the order. The Commissioner (Appeals) was empowered to condone the delay of thirty days over and above the 60 days, beyond which he has no power to condone the delay. The ninety days period came to an end on 22.03.2015, but the petitioner filed the appeal only on 21.08.2015. Therefore, the first respondent though recorded the merits of the contentions raised by the petitioner Municipality did not go into the said aspect and rejected the appeal petition on the preliminary ground that he has no power to condone the delay than what is prescribed under Section 85(3A) of the Finance Act, 1994. In this regard, the Commissioner (Appeals) has also referred to the decision of the Tribunal.

3.There can be no quarrel about the legal position that when a statute prescribes a outer time limit for the purpose of condonation of delay then the statutory authority exercising jurisdiction under particular statute cannot suo motu extend the period of limitation prescribed in the statute. This being the settled legal position, it may not be necessary for the Court to refer to the various decisions on the point. However, in the instant case, I am inclined to make a slight departure considering the peculiar facts and circumstances. Firstly, the petitioner Municipality, a local authority who is vested with a constitutional obligation to take care of the citizens residing in its locality and every service done by the Municipality has an element of public interest attached to it and therefore, some latitude can be granted to such a local authority. Secondly, the petitioner Municipality has paid the entire tax as demanded and also complied with the conditional order passed by this Court at the time of entertaining the writ petition by remitting a sum of Rs.5 lakhs towards penalty. However, the learned Senior Standing Counsel would submit that it is not clear as to whether the petitioner has paid the entire tax. Thus indulgence is being granted to the petitioner to go before the Appellate Authority to contest the appeal petition on merits as the right of appeal is a very valuable right subject to the condition that the petitioner Municipality pays the entire tax and the payment of Rs.5 lakhs towards penalty can be reckoned as partial compliance of the order passed by the second respondent. If that be so, till the appeal is heard and decided by the first respondent, further amount of penalty shall not be demanded from the petitioner.

4.The learned Senior Standing Counsel for the Revenue placed reliance on the order passed by this Court in the case of M/s.Ultra Manpower Services vs. The Assistant Commissioner of Central Excise, # 1 Vallar Nagar, Manjakuppam, Cuddalore and another in W.P.No.28942 of 2017 dated 13.11.2017. In the said case also, a similar view was taken by this Court, but the petitioner therein was given opportunity to move the CESTAT/Tribunal. In the instant case, since the First Appellate Authority has not tested the correctness of the order passed by the Assessing Officer. Therefore, this Court is inclined to remand the matter to the First Appellate Authority for fresh consideration.

5.Thus, for the above reasons, the writ petition is partly allowed and the order passed by the first respondent dated 30.10.2015 is set aside and the matter is remanded to the first respondent for fresh consideration and to deal with the appeal petition on merits and in accordance with law. It is made clear that this order has been passed considering the peculiar facts and circumstances of the case and shall not be treated as a precedent. No costs. Consequently, connected miscellaneous petitions are closed.

cse

Sd/-
Assistant Registrar(Cs IV)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner (Appeals-I),
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No.1, Foulks Compound,
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6.The Branch Manager,
Canara Bank, Komarapalayam Branch,
Komarapalayam, Namakkal District.

+1cc to M/s.K.Chandrasekaran, Advocate Sr.No.126
+1cc to M/s.G.Sankaran, Advocate Sr.No.232
+1cc to M/s.V.Sundareswaran, Advocate Sr.No.132

PPA(CO)
sm:30.1.2018

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