IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

Writ Petition No.22973 of 2018
and
W.M.P.No.26880 of 2018

M/s. Madhucon Granites Ltd.,
Represented by its Director Ms.N.Umadevi
S.No.222/1-C,223/1, besides Door No.135,
Addakurukki Village,
Kamandoddi Post,
Hosur - 635 109. ... Petitioner

vs.

1. The Commissioner (Appeals),
No.1, Foulke's Compound,
Anai Road,
Salem - 636 001.

2. The Deputy Commissioner of Central Excise,
Hosur I Division,
Hosur.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Certiorarified Mandamus to call for the records in A.No.177/2017-ST on the file of the respondent comprising of Order in Appeal No.98/2018-ST dated 29.05.2018 and quash the same and consequentially direct the first respondent to condone the delay of the petitioner in preferring an appeal against the Order-in-Original No.13/2017-ST dated 27.04.2017 for the aforementioned reasons and hear the petitioner's appeal on merits and dispose of the same after according an opportunity of personal hearing.

For Petitioner : Mr.Akhil Suresh

For Respondents : Mrs.Aparna Nandakumar,
Senior Panel Counsel

O R D E R

The petitioner is aggrieved against the order of the first respondent dated 29.05.2018, wherein and whereby, the appeal filed by the petitioner against the Order-in-Original No.13 of 2017 dated 27.04.2017 was rejected only on the reason that the said appeal was filed beyond the period as prescribed under the relevant statute.

2.Heard both sides.

3. A counter affidavit is filed by the respondents disputing the contentions raised by the petitioner.

4. It is seen that the petitioner suffered an Order-in-Original passed by the Deputy Commissioner of Central Excise, Service Tax Cell, Hosur I Division, Thally Road, Hosur, dated 27.04.2017. It is evident from the said Order-in-Original that the petitioner is also informed that an appeal against the said order would lie before the Commissioner (Appeals), Chennai-34. However, as the jurisdiction got bifurcated in the meantime, the appeal has to be filed only before the first respondent herein. On the other hand, the petitioner claimed that they filed the appeal before the Commissioner (Appeals), Chennai 34, and the same was not entertained on the reason that it has to be filed only before the first respondent herein. Therefore, it is contended that on account of such bifurcation of jurisdiction and the confusion caused in the mind of the petitioner with regard to the actual Appellate Authority before whom such appeal has to be filed as stated supra, the appeal was filed before the first respondent with a delay of 25 days, over and above the condonable period of 30 days. Therefore, the petitioner seeks to challenge the order of the first respondent with a further direction to entertain the appeal by condoning the delay.

4. The learned counsel appearing for the petitioner reiterated the above contentions. He further submitted that as the Appellate Authority at Chennai did not receive the appeal papers, the petitioner did not have any acknowledgement to show that they have filed the appeal in time before the Commissioner (Appeals) Chennai.

5. On the other hand, the learned counsel for the respondents contended that in the absence of any proof to show that the petitioner has filed the appeal before the Commissioner (Appeals) Chennai, within time, the appeal filed before the first respondent with a delay, that too, beyond the condonable period has rightly been rejected as time barred.

6. There is no dispute to the fact that the Order-in-Original passed against the petitioner dated 27.04.2017 has indicated that an appeal shall lie before the Commissioner (Appeals), Chennai. Therefore, I find justifiable reasons to believe that the petitioner would have approached the Commissioner (Appeals), Chennai, in time, and thereafter, filed the appeal before the first respondent however, with the delay as stated supra. Since the first respondent has rejected the appeal only on the reason that the same was time barred, without expressing any view on the merits of the matter, I am of the view that the valuable statutory right of appeal provided to the petitioner cannot be denied on the simple reason that the said appeal was filed with meagre delay of 25 days. Therefore, this Court is inclined to set aside the impugned order and remit the matter back to the first respondent to consider the appeal and pass orders on the same in accordance with law. It is also made clear that this Court is not expressing any view on the merits of the order passed by the Adjudicating Authority as well as the claim made by the petitioner against such order in the appeal, since it is for the first respondent to consider the same and decide.

7. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the first respondent to take up the appeal filed by the petitioner and pass orders on the same on merits and in accordance with law, after hearing the petitioner. Such exercise shall be done by the first respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Commissioner (Appeals),
   No.1, Foulke's Compound,
   Anai Road,
   Salem - 636 001.

2. The Deputy Commissioner of Central
   Excise,
   Hosur I Division,
   Hosur.

+1cc to Mr.Aparna Nandakumar, Advocate, S.R.No.79739

+1cc to Mr.S.Muthu Venkataraman, Advocate, S.R.No.80044

VD(CO)
GSP(12/12/2018)