In the High Court of Judicature at Madras

Dated : 11.07.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.17325 of 2018
and
W.M.P.No.20587 of 2018

M/s.M.M.Engineers Pvt. Ltd.,
Madukarai Road,
Sundarapuram, Coimbatore 641 105. ... Petitioner

Vs

1.The Customs Excise & Service Tax Appellate Tribunal
26, Haddows Road
Chennai – 600 006

2. The Commissioner of Central Excise
6/7, ATD Street
Race Course Road
Coimbatore ... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the case in impugned Misc.Order No.40309 of 2018, dated 22.03.2018, passed by the first respondent and to quash the same and consequently direct the first respondent to restore the Appeal No.E/856/2003-DB to its Original Number and hear the appeal on merits.

For Petitioner : Mr.T.Ramesh

For Respondents : Mr.A.P.Srinivas
Senior Panel Counsel

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ORDER

Heard Mr.T.Ramesh, learned counsel for the petitioner and Mr.A.P.Srinivas, learned senior panel counsel appearing for the respondents.

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2.The learned counsel on either side submitted that the issue involved in this writ petition is identical to that of the issue which was raised and considered in W.P.No.14666 of 2005 filed by the very same petitioner. The said writ petition was disposed of by order dated 28.06.2018 and the operative portion of the order would run as follows:

> "2.This writ petition has been filed by the petitioner challenging an order passed by the first respondent viz., the Customs Excise & Service Tax Appellate Tribunal, rejecting the petitioner's application for condonation of delay of 106 days in filing the appeal. The petitioner had stated that the reason for not being able to file the appeal in time was on account of the inconvenience caused to the consultant and also the fact that the wife of the consultant had met with an accident. It is further submitted that the petitioner moved another application for condonation of delay before the first respondent, wherein the delay was 41 days and same reason was given, which was accepted by the Tribunal.
>
> 3.In my considered view, the delay of 106 days cannot be construed to be an inordinate delay especially when the first respondent does not allege that the petitioner had purposely not filed the appeal in time and had filed the appeal with delay only to drag on the proceedings. The inconvenience caused to the consultant and the submission that the consultant's wife met with an accident have not been shown to be a wrong statement. Ordinarily, a person does not stand to benefit by lodging an appeal belatedly. Thus, in the absence of malafides on the part of the assessee in belatedly filing the appeal, this Court is of the view that liberal approach is to be adopted.
>
> For the above reasons, this writ petition is allowed and the impugned order dated 07.03.2005 is set aside and the delay of 106 days in filing the appeal is condoned and the first respondent CESTAC is directed to proceed further in accordance with law. No costs."

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3.Following the said order, the writ petition is allowed and the impugned order dated 22.03.2018 is set aside; the restoration application filed by the petitioner in ROA/40637/2017 is allowed and the Appeal No.E/856/2003-DB is restored to file and the first respondent CESTAC is directed to proceed further in accordance with law. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

To

1.The Customs Excise & Service
Tax Appellate Tribunal
26, Haddows Road
Chennai - 600 006

2. The Commissioner of Central Excise
6/7, ATD Street
Race Course Road
Coimbatore

+1cc to Mr.T.RAMESH, Advocate, S.R.No.45412
+1cc to Mr.A.P.SRINIVAS, Advocate, S.R.No.45252

W.P.No.17325 of 2005

NRI(CO)
TR(20/07/2018)

HIGH COURT OF JUDICATURE MADRAS
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