In the High Court of Judicature at Madras

Dated : 20.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.17702 of 2013 &
MP.No.1 of 2013
& WMP.No.2540 of 2018

M/s.Raahul Foundations,
rep. by its Proprietor ...Petitioner

Vs

1.The Additional Commissioner,
office of the Commissioner of
Central Excise, Chennai II
Commissionerate, No.692,
Anna Salai, Nandanam, Chennai-35.

2.The Commissioner (Appeals),
office of the Commissioner of
Central Excise (Appeals), 26/1,
Mahatma Gandhi Road,
Chennai-34.

3.The Superintendent of Service Tax,
Group 1, Division 5, office of the
Assistant Commissioner of Service
Tax, Division 5, Service Tax
Commissionerate, II Floor, Newry
Towers, Plot No.2054, I Block,
12th Main Road, II Avenue,
Anna Nagar, Chennai-40. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in Order-in-Appeal No. 12/2013 (MST) in A.No.617/2012 (MST) dated 08.1.2013 passed by the 2nd respondent and quash the same and consequently quash Order-in-Original No.25/2011 in C.No.IV/9/452/09/STC/ADJN dated 08.3.2011 passed by the first respondent and quash the same and thereby set aside the Order in Original (prayer amended as per order dated 21.6.2018 by TSSJ in WMP.No. 2539 of 2018 in WP.No.17702 of 2013).

For Petitioner : Ms.A.Vinuprabha for Mr.S.Ramesh Kumar

For Respondent : Mr.A.N.R.Jayapratap for Mr.A.P.Srinivas, SPC

ORDER

Heard both.

2. The amended prayer in this writ petition is to quash the order passed by the second respondent in Order-in-Appeal No.12/2013 (MST) in A. No.617/2012 (MST) dated 08.1.2013 and the consequential Order-in-Original No.25/2011 in C.No.IV/9/452/09/STC/ADJN dated 08.3.2011 passed by the first respondent.

3. The appeal has been rejected by the Appellate Authority on the ground that the appeal has been filed beyond the condonable period. Since the provisions of the Central Sales Tax Act, 1956 have been made applicable to the provisions of the Finance Act, 1994 in so far as limitation of filing an appeal is concerned, there is no power to condone the delay beyond the period of 90 days and therefore, the second respondent is well justified in rejecting the appeal. However, this Court, in rarest of rarest cases, would exercise its discretion in the matter, when it is shown that for certain bona fide reasons, the petitioner could not pursue the appeal remedy.

4. In the instant case, the Order-in-Original was passed on 08.3.2011. This was put to challenge by the petitioner in WP.No.25809 of 2012. When the said writ petition was heard, this Court was of the view that the writ petition was not maintainable and the petitioner should file an appeal before the second respondent. Therefore, the petitioner was permitted to withdraw the said writ petition, which was dismissed as withdrawn on 11.10.2012. The period of limitation for filing an appeal came to an end on 15.6.2011 and the condonable period came to an end on 15.9.2011. However, the petitioner filed the appeal on 30.11.2012.

5. These dates have been given by the petitioner by stating that the Order-in-Original dated 08.3.2011 was served on the petitioner on 15.3.2011. Thus, it could be seen that the petitioner was bona fidely prosecuting their claim before the wrong forum and this Court permitted the petitioner to withdraw the writ petition and pursue the appeal remedy. Therefore, this Court is of the view that the petitioner should not be non suited on the ground that they approached the Appellate

Authority belatedly.

6. In the result, the writ petition is partly allowed, the Order-in-Appeal dated 08.1.2013 passed by the second respondent is set aside and the matter is remanded to the second respondent to consider the appeal on merits. The petitioner is at liberty to raise all contentions before the Appellate Authority including the contention that the demand is time barred. No costs. Consequently, the connected WMP and MP are closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

To

1.The Additional Commissioner,
office of the Commissioner of Central Excise,
Chennai II Commissionerate,
No.692, Anna Salai, Nandanam,
Chennai-35.

2.The Commissioner (Appeals),
office of the Commissioner of Central Excise
(Appeals), 26/1, Mahatma Gandhi Road,
Chennai-34.

3.The Superintendent of Service Tax,
Group 1, Division 5,
office of the Assistant Commissioner
of Service Tax,
Division 5, Service Tax
Commissionerate, II Floor,
Newry Towers, Plot No.2054, I Block,
12th Main Road, II Avenue,
Anna Nagar, Chennai-40.

+1cc to Mr.S.Ramesh Kumar, Advocate SR.No.48618
+1cc to Mr.A.P.Srinivas, Advocate SR.No.48700

WP.No.17702 of 2013 & MP.No.1
of 2013 & WMP.No.2540 of 2018

SS(CO)
GN(06/08/2018)