IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.01.2019

CORAM
THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.685 of 2019
and
W.M.P.No.749 of 2019

Tvl. KSM Earth Movers
Represented by its partner P.Kandavel
No.423/86 - A3,
Theppakulam Street,
Sankari Road,
Thiruchengodu,
Namakkal District. ...Petitioner

vs.

1. The Commissioner (Appeals),
O/o. The Deputy Commissioner of Central Excise & Service Tax, Erode-II Division
No.81, Bharathi Nagar
Soolai Road, Erode - 638 004.

2. The Deputy Commissioner of Central Excise
Erode-II Division
O/o. The Deputy Commissioner of Central Excise & Service Tax, Erode-II Division
No.81, Bharathi Nagar
Soolai Road, Erode - 638 004. ...Respondents

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 proceedings of the respondent first respondent in Order-in-Appeal No.152/2018-ST dated 17.09.2018 and quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondents : Mr.K.Magesh
Standing Counsel

O R D E R

Mr.K.Magesh, learned Standing Counsel takes notice for the respondents. By consent of the parties, this main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of the first respondent dated 17.09.2018, in dismissing the appeal on the ground that the same was filed beyond the period of limitation.

3. The petitioner suffered an Order-in-Original dated 31.01.2017 passed by the Deputy Commissioner of Central Excise and Service Tax, Erode-II Division, viz., the second respondent herein. Challenging the said order, the petitioner preferred a writ petition filed in W.P.No.19626 of 2017. The said writ petition was dismissed on 16.08.2017 as not maintainable. However, the Writ Court also observed that it was left open to the petitioner to prefer an appeal to the Appellate Authority, if so advised. The petitioner challenged the said order of the Writ Court before the Division Bench of this Court in W.A.No.1356 of 2017. By an order dated 07.12.2017, the Division Bench dismissed the writ appeal, however, by permitting the petitioner to move the Appellate Forum also by observing that the time granted by the Writ Court was extended by two weeks from the date of receipt of a copy of that order. Thereafter, the appeal was preferred before the first respondent on 05.01.2018. The Appellate Authority rejected the appeal only on the reason that the same was filed beyond the period of limitation.

4. The learned counsel appearing for the petitioner contended that the Division Bench of this Court has granted two weeks time for preferring an appeal from the date of receipt of copy of the order made in Writ Appeal and that the copy of the order was received by the petitioner on 14.12.2017. He further contended that the original impugned order was returned by the Registry of this Court after making a request by the petitioner only on 22.12.2017. Therefore, the learned counsel contended that immediately after receiving the original impugned order, the petitioner preferred an appeal before the Appellate Authority and thus, there is no willful delay on the part of the petitioner.

5. On the other hand, the learned Standing Counsel appearing for the respondents contended that the Writ Court has not granted any time for filing the appeal, even though the Division Bench of this Court has extended the time granted by the Writ Court as two weeks. Therefore, he contended that the appeal filed beyond the time limit was rightly rejected by the Appellate Authority.

6. Heard both sides.

7. There is no dispute to the fact that the Writ Court while dismissing the writ petition has observed that it was open to

the petitioner to prefer an appeal to the Appellate Authority. In the very same order, there was a direction to the Registry to return the original impugned order. However, when the petitioner took the matter in writ appeal, the Division Bench, though has chosen to dismiss the writ appeal, has however, extended the time for filing the appeal by two weeks from the date of receipt of a copy of that order. When such being the observation made by the Division Bench and when it is stated that the original impugned order was delivered by the Registry to the petitioner only on 22.12.2017, the appeal filed on 05.01.2018 cannot be treated as the one filed beyond the period of limitation, in view of the liberty and time granted by this Court as discussed supra. In any event, as the merits of the matter in the appeal has to be gone into and decided, this Court is of the view that the petitioner can be given a chance to agitate the matter before the Appellate Authority on merits.

8. 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 dispose the same on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sni/mk

To

1. The Commissioner (Appeals),
O/o. The Deputy Commissioner of Central Excise &
Service Tax
Erode-II Division
No.81, Bharathi Nagar
Soolai Road,
Erode - 638 004.

2. The Deputy Commissioner of Central Excise
Erode-II Division
O/o. The Deputy Commissioner of Central Excise &
Service Tax
Erode-II Division
No.81, Bharathi Nagar
Soolai Road,
Erode - 638 004.

+1cc to Mr.K.Magesh, Advocate, S.R.No.3029
+1cc to Mr.S.Ravee Kumar, Advocate, S.R.No.3428

W.P.No.685 of 2019

RK(CO)

rrs 08/02/2019