C.M.P.Nos.9420 and 9417 of 2019
in C.M.A.SR.Nos.23507 and 40080 of 2019

T.S.SIVAGNANAM, J.
AND
V.BHAVANI SUBBAROYAN, J.

(Order of the Court was made by T.S.SIVAGNANAM, J.)

Heard Mr.Senthilnathan, learned counsel for the petitioner and Ms.R.Hemalatha, learned Standing Counsel appearing for the respondent.

2. These petitions have been filed to condone the delay of 684 days in filing the appeals before this Court, challenging the order passed by Customs, Central Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai.

3. Before proceeding to examine as to whether the petitioner has shown sufficient cause for not having filed the appeals before this Court on time, we need to take note of the conduct of the petitioner in the proceedings before the Tribunal. The respondent issued the show cause notice dated 09.01.2012, in which there was a proposal to demand a sum of Rs.2,39,14,470/- towards service tax, apart from other levies such as education cess etc., and a proposal to deny the benefit of exemption under Notification No.9/2009-ST dated 03.03.2009 as amended by Notification No.17/2011-S.T dated 01.03.2011, an amount of Rs.96,87,521/- towards service tax interest and why penalty should not be imposed. The petitioner did not reply to the

show cause notice for more than ten months. Therefore, the department sent a letter dated 03.10.2012, calling upon the petitioner to appear for personal enquiry on 12.12.2012. The petitioner, by a letter dated 06.12.2012, requested for adjournment of the personal hearing to 19.12.2012 and even on the said date, the petitioner did not appear. Subsequently, on 28.12.2012, the petitioner sent a letter, stating that they would be filing a application before the Settlement Commission. However, the petitioner did not file any such application before the Settlement Commission and the department, with a view to give one more opportunity, by a letter dated 01.07.2013, directed the petitioner to appear for personal hearing on 17.07.2013. At the request of the petitioner, the personal hearing was adjourned to 24.07.2013. However, on the said date also, the petitioner did not appear and by a letter dated 07.08.2013, the petitioner requested for some more time to file a reply to the show cause notice. Thus, the department came to know that the petitioner has been dragging on the matter, but however in order to protect the rights of the petitioner, the department sent a letter dated 06.03.2014, informing the petitioner that the case will be decided exparte based on the available documents if the petitioner fails to respond within a week's time. However, the petitioner neither appeared personally nor sent any reply to the said letter. Consequently, based on the available materials, the adjudicating authority passed the order in original dated 20.03.2014.

4. The petitioner continued to be negligent and though filed an appeal before the CESTAT with a delay of about 400 days, it is not clear as to whether the minimum pre-deposit required to be complied with, was paid by the petitioner. Be that as it may, the petitioner did not contest the matter before the Tribunal and the Tribunal, by an order dated 06.10.2016, dismissed the petition for condonation of delay. Subsequently, the petitioner filed miscellaneous application before the tribunal for restoration of the condone delay application. Even when the said application was heard by the tribunal, none appeared for the petitioner and the tribunal, taking note of the conduct of the petitioner, dismissed the application vide order dated 29.05.2017. Even thereafter, the department did not take any action against the petitioner for close to 1 ½ years and recovery notice was issued only on 13.12.2018. Even thereafter, the petitioner took no steps to file an appeal before this Court. Though it is stated by the petitioner that the appeal was presented on 21.03.2019, the office report shows that it was filed on 11.04.2019.

5. On a perusal of the affidavit filed in support of the petitions, it is seen that though the affidavit contains five paragraphs, three paragraphs are devoted to the merits of the matter and in paragraph 4, the petitioner has blamed his staff who were looking after the service tax matters. There is no explanation for the 684 days delay. Further more, the conduct of the petitioner in the proceedings before the Tribunal clearly precludes us from exercising any discretion in favour of the petitioner.

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6. For the above reasons, we find no reason to condone the delay, which is inordinate and unexplained. Accordingly, these petitions are dismissed. Consequently, the CMAs are rejected at the SR stage itself.

(T.S.S.J.) (V.B.S.J.,)
16-04-2019

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