IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.17778 of 2019
and
W.M.P.No.17183 of 2019

M/s.Beeku Exports,
Represented by Mr.C.O.K.Mohammed Niyaz,
Partner, 64, Janakiram Nagar,
Cudappah road, Puthugaram,
Chennai - 9. ..Petitioner

vs

1. The Commissioner of GST & Central Excise(Appeals-1) 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai - 34.

2. The Assistant Commissioner of GST & Central tax, Madhavaram division, Chennai North Commissionerate, 1st floor, Newry towers, Anna Nagar, Chennai - 40. ..Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the 1st respondent in order-in-appeal no.144/2019(CTA-I) dated 03.05.2019, received on 04.05.2019 and quash the same as being violative of principles of natural justice and contrary to the provisions of the Finance Act, 1994 and hence invalid and illegal.

For Petitioner : Mr.V.Srikanth

For Respondents : Mr.N.Senthil kumar
Standing counsel

O R D E R

Learned counsel for writ petitioner expresses regret for not appearing in the previous hearing on 12.07.2019.

2. Mr.V.Srikanth, learned counsel on record for writ petitioner and Mr.N.Senthil kumar, learned standing counsel on behalf of both the respondents are before this Court.

3. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

4. Crux and gravamen of this case and the narrowed down central / lone issue has been captured in the previous proceedings of this Court dated 27.06.2019, which reads as follows:

> 'Mr.V.Srikanth, learned counsel on record for writ petitioner is before this Court. Mr.N.Senthilkumar, learned Standing Counsel accepts notice on behalf of both the respondents.
>
> 2. A statutory appeal under Section 85(3A) of Finance Act, 1994 has been dismissed by the first respondent on the ground of limitation. This is vide order dated 03.05.2019 in Appeal No.144/2019(CTA-I) (hereinafter 'impugned order' for brevity). In the impugned order, Appellate Authority has held that the writ petitioner has received the original order on 22.09.2018 and has therefore, dismissed the appeal on the ground of limitation, the appeal having been filed on 13.03.2019.
>
> 3. It is the specific contention of learned counsel for writ petitioner that the original order in appeal was received only on 14.01.2019, but the envelope or any other document to support this contention is not before this Court. It has also become

necessary to examine the records of the first respondent to examine the basis on which the first respondent came to the conclusion that original order was received by the writ petitioner on 22.09.2019.

4. Learned counsel for writ petitioner also drew the attention of this Court to Section 37C of Central Excise Act, 1944.

5. Be that as it may, writ petitioner counsel seeks time to produce the envelope to demonstrate that original order was received by the writ petitioner was only on 14.01.2019.

6. Revenue counsel shall also keep the records pertaining to the impugned order ready in the next listing.

7. There shall no coercive action against the writ petitioner till the next listing.

List on 11.07.2019.'

5. Today, adverting to photo copies from the department file, learned standing counsel submitted that the order has been despatched on 20.09.2018 and that the same has been delivered on 22.09.2018. To be noted, the photo copies from the department's file are postal receipts. It is submitted that the postal acknowledgment card is not available in the department file.

6. Adverting to an Electronic Mail dated 04.12.2018 from the department, learned counsel for writ petitioner submits that the postal receipt and the postal acknowledgment card as provided by the department (in response to writ petitioner's query) are as follows:

भारतीय डाक

India Post

RT192491283IN IVR:828419249128

RL ANNA ROAD H.O <600002>

Counter No:12,20/09/2018,16:13

To:M/S BEEKU EXPORTS,-

PIN:600099, Kolathur SO

From:ASST COMMISSIONER OF ,GST

Wt:45gms

Amt:0.00SS:35.00

<Track on www.indiapost.gov.in>

<Dial 1800

आर.पी.54
R.P.-54

R.2

भारतीय डाक विभाग
DEPARTMENT OF POSTS, INDIA
प्राप्ति–स्वीकृति / ACKNOWLEDGEMENT

काट दिया जाए
Strike out if not relevant

रजिस्ट्री–पत्र / पार्सल प्राप्त हुआ
Received Registered Letter/Parcel

क्रमांक / No. तारीख / Dated का / of

बीमे का मूल्य रुपयों में M/S. BEEKU EXPORTS
*Insured for Rupees CH-99

पाने वाले
Addressed to

को / On

वितरण डाकघर की तारीख–मोहर
Date Stamp of office of Delivery

हस्ताक्षर और नाम / Signature and

7. A perusal of the postal acknowledgment card reveals that the writ petitioner addressee has been described as 'M/s. Beeku Exports, Chennai - 99'. In the considered view of this Court, this is hardly an address much less a postal address, wherein a proper delivery is possible.

8. As can be seen from the memorandum of grounds of appeal, the full and complete postal address of the writ petitioner is as follows:

> 'M/s.Beeku Exports, 64, Janakiram Nagar, Cudappah Road, Puthagaram, Chennai - 99.'

9. With regard to receiving the order only on 14.01.2019, it is submitted by learned counsel for writ petitioner that it was obtained in person from the office of the writ petitioner. In this regard also, a perusal of the memorandum of grounds of appeal before the first respondent, reveals that the writ petitioner has mentioned in the template memorandum of grounds of appeal that the date of communication of the decision i.e., order appealed against to the appellant is 14.01.2019.

10. From the narrative thus far, it emerges clearly that it can be safely inferred that the date of receipt of the order-in-original i.e., order dated 11.07.2018 is 14.01.2019 and not any earlier date.

11. This takes us to the impugned order made by the 1st respondent.

12. There is no disputation or disagreement before this Court that vide the impugned order, first respondent, who is the First Appellate Authority, in exercise of quasi judicial powers has dismissed the appeal solely on the ground of limitation without examining the matter on merits.

13. Now that it emerges clearly that it can be safely inferred that the date of receipt of the order-in-original dated 11.07.2018 made by the original authority is 14.01.2019, this Court passes the following order:

> a) Impugned order being order dated 03.05.2019 being reference Order-in-Appeal No.144/2019(CTA-I) made by 1st respondent is set aside. To be noted, it is set aside without expressing any opinion or view on the merits of the matter. It is being set aside for the purpose of facilitating the matter being examined on merits by the First Appellate Authority namely the 1st respondent.

b) The 1st respondent Appellate Authority shall take up the appeal being a Statutory appeal under Section 85 of the Finance Act, 1994 filed by the writ petitioner, examine the same on merits and pass orders in accordance with law.

c) Orders passed on merits in the aforesaid manner by the 1st respondent in the appeal shall be communicated to the writ petitioner under due acknowledgment in accordance with the rules in this regard.

14. This writ petition is allowed and disposed of with the aforesaid directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of GST &
   Central Excise(Appeals-1)
   26/1, Mahatma Gandhi Marg,
   Nungambakkam, Chennai - 34.

2. The Assistant Commissioner of
   GST & Central tax,
   Madhavaram division, Chennai North
   Commissionerate, 1st floor,
   Newry towers, Anna Nagar,
   Chennai - 40.

+1cc to Mr.N.Senthil kumar, Advocate, S.R.No.60180
+1cc to Mr.V.Srikanth, Advocate, S.R.No.59959

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CS/09/09/2019