BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.14559 of 2015
and
W.M.P(MD)Nos.1 & 2 of 2015
and 607 of 2017

Shanmugasundaram ... Petitioner

Vs.

1.The Assistant Commissioner of Central Excise,
Karur Division, Karur.

2.The Commissioner of Customs & Central Excise,
No.1, Williams Road,
Cantonment,
Trichirapalli - 620 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records of the second respondent in A.No.173/2007-TRY (ST) Order-in-Appeal 61/2009 dated 28.04.2009 and the consequential order of the first respondent in C.No.IV/16/10/2011-TRC dated 07.07.2015 quash the same and consequently forbear the respondents from in any manner demanding or recovering the penalty of Rs.1,70,732/- for the alleged payment of the Service Tax for the period 2005-06.

For Petitioner : Mr.P.Srinivas

For Respondents : Mr.S.Gurumurthy

ORDER

Heard Mr.P.Srinivas and Mr.S.Gurumurthy for the parties.

2.The case of the petitioner is that coercive recovery has been initiated even though he had not received the appellate order passed by the Commissioner of Customs and Central Excise (Appeals) and hence, was under the bonafide impression that his appeal was pending disposal. It was only when coercive action was taken for recovery of service tax and penalty, that he approached the Assessing Authority and was informed that his appeal had been disposed as early as on 28.04.2009. It was at that juncture, that he was given a xerox copy of the order passed by the Commissioner (Appeals) dated 28.04.2009 dismissing his appeal.

3.A counter has been filed by the respondents, wherein at paragraph No.10, it is admitted that there is no acknowledgment from the postal department for service of the order upon the petitioner. The respondents only state that the order was sent by registered post with acknowledgment due, but is silent on the aspect of service thereof on the petitioner.

4.Even before me, learned counsel for the respondents fairly does not agitate the position that there has, admittedly, been no service of the original order of the Commissioner (Appeals) upon the petitioner.

5.I am of the view that no recovery action may be initiated, in the aforesaid circumstances and the respondents are directed to keep in abeyance such recovery for a period of eight weeks from the date of this order.

6.The prayer in this Writ Petition is for a Writ of Certiorarified Mandamus, quashing order of the Commissioner (Appeals), dated 28.04.2009 as well as order of assessment passed by the Assessing Authority, dated 07.07.2015. These prayers cannot be granted insofar as the petitioner has rightly taken resort to the appellate hierarchy provided under statute. Instead, I mould the relief to be granted and permit the petitioner to file an appeal challenging the order of the Commissioner (Appeals) dated 28.09.2009 within a period of four weeks from today. The Registry of the Customs, Central Excise and Service Tax Appellate Tribunal shall not insist upon production of the original order seeing as, admittedly, the same has not been served upon the petitioner and shall receive the appeal with a xerox copy of the same, subject to the appeal being otherwise in order. Such appeal, if filed within the time line as stipulated aforesaid, shall be heard and disposed by the Tribunal as expeditiously as possible.

7.This Writ Petition is disposed of in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Assistant Commissioner of Central Excise,
Karur Division, Karur.

2.The Commissioner of Customs & Central Excise,
No.1, Williams Road,
Cantonment,
Trichirapalli - 620 001.

3. The Registrar,
Customs, Central Excise and Service Tax Appellate Tribunal,
Chennai.

+1CC TO MR.P.SRINIVAS, Advocate Sr. No. 75324

W.P(MD)No.14559 of 2015
15.07.2019

GRC(CO)
TR (18.07.2019) 3P 5C