IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.01.2020
CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN
W.P.No.11524 of 2011
and
W.M.P. Nos. 1 of 2011 and 1 of 2013

M/s. Sathee Engineering Construction Company,
Rep. by its Proprietor, Mr.Gopu Kumar,
Thevalapuram Post,
Puthur, Kollam District,
Kerala - 691 507 ... Petitioner

Vs.

1. Additional Commissioner of Central Excise,
No.1, Foulk's Compund, Anna Medu,
Salem.

2.Commissioner of Customs & Central Excise,
No.1, Foulk's Compund, Anna Medu,
Salem. ... Respondents

Prayer: Writ Petitions are filed under article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the impugned proceedings of the 1st respondent passed in C.No.V/CAI15/108/2009-ST.ADJ/O.I.O. SL. No.13/2009 (ADC) Dated 29.12.2009.

For Petitioner : Mr.N.Murali
For Respondent : Mr. V. Sundareswaran (CGSSC)

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O R D E R

Heard the learned counsel for the petitioner and the respondent.

2.The petitioner has challenged the impugned order dated 29.12.2009. By the impugned order, the 1st respondent has confirmed a sum of Rs.23,05,874/- (Rupees Twenty Three Lakhs Five Thousand Eight Hundred and Seventy Four Only) as Service tax and the Education cess and Secondary higher education cess on the taxable service provided by the petitioner between July 2008 to March 2009.

3. The Impugned order was passed by the 1st respondent pursuant to a show cause notice dated 10.09.2008 to the petitioner to show cause as to why the petitioner should not be made liable to pay service tax for having provided taxable service under the category of erection, commissioning and installation service.

4. It is the contention of the petitioner that the petitioner could not file a statutory appeal due to bereavement in the family as his wife expired had on 01.07.2007. Therefore, the petitioner has challenged the impugned order before this Court under Article 226 of the Constitution of India.

5.I have considered the arguments of the learned counsel for the petitioner and the respondent. I have also perused the impugned order passed by the 1st respondent. Though, the petitioner was issued to show cause notice dated 10.09.2008, the petitioner failed to file any reply to the said show cause notice.

6.It is further noticed that the show cause notice was issued on 10.09.2008 whereas the petitioner's wife passed away on 01.03.2007 which was much prior to the issue of the said show cause notice. Further, the petitioner also failed to file a reply.

7.After the impugned order was passed on 29.12.2009, the petitioner should have filed an appeal before the appellate commissioner namely, the 2nd respondent within a period of 60 days or within a period of 30 days thereafter with an application for condoning the delay after explaining the reasons for the delay. Though, the preamble to the impugned order states that the appeal should have been filed within 90 days, as per the amendment to Section 35 of the Central Excise Act, 1944 in 2001, a statutory appeal should have been filed within 60 days of receipt of the impugned order. The present writ petition has been filed long after a lapse limitation on 26.04.2011.

8.Therefore, I am unable to allow the petitioner to approach the 2nd respondent Appellate Commissioner as the petitioner has been negligent in neither participating in the adjudicatory mechanism provided under the Act nor in not filing a statutory appeal in time. Even according to the petitioner, the impugned order was received on 4.01.2010. No steps were taken by the petitioner to file a statutory appeal or approach this Court within a time. Therefore, I do not find any merit in the present petition.

9. Accordingly, the writ petition is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

lbm

Copy to:

1. Additional Commissioner of Central Excise,
   No.1, Foulk's Compund, Anna Medu, Salem.

2. Commissioner of Customs & Central Excise,
   No.1, Foulk's Compund, Anna Medu, Salem.

+1cc to Mr.N.Murali, Advocate, SR.No.2097.
+1cc to Mr.V.Sundareswran, Advocate, SR.No.1907.

W.P.No.11524 of 2011
and
W.M.P. Nos. 1 of 2011 and 1 of 2013

GJ(CO)
CSR: 28.02.2020