IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31335 of 2018
and
W.M.P.No.36524 of 2018

The Executive Officer,
Kaveripattinam Selection Grade Town Panchayat,
Kaveripattinam,
Krishnagiri District – 635 112. .. Petitioner

Vs.

1. The Commissioner of Central Excise Appeals,
Office of Commissioner of Central Excise,
No.1, Foulks Compound, Anaimedu,
Salem – 636 001.

2. The Deputy Commissioner of Central Excise,
Service Tax Cell,
Hosur-I Division, Thally Road,
Hosur – 635 109,
Krishnagiri District.

3. The Assistant Commissioner of Central Excise,
Hosur I Division, Thally Road,
Hosur – 635 109,
Krishnagiri District.

4. The Branch Manager,
Indian Bank, Kaveripattinam Branch,
No.222, Salem Main Road,
Kaveripattinam – 635 112,
Krishnagiri District. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 1st Respondent in A.No.18/2018-ST dated 24.08.2018 and to quash the same and consequently directing the 1st Respondent to decide the Appeal Petition submitted by the Petitioner in Form ST-4 dated 17.01.2018 on merits and in accordance with law.

For Petitioner	:	Mr.G.Sankaran
For RR 1 to 3	:	Mr.Umesh Rao Senior Panel Counsel
For R4	:	No appearance

ORDER

The order in appeal passed by the 1st respondent in order dated 24.08.2018 is under challenge in the present Writ Petition.

2.The learned counsel appearing for the petitioner states that the appeal filed against the Order-in-Original by the petitioner was dismissed on the ground that the petitioner has not complied with the condition of pre-deposit to be made under the provisions of the Central Excise Act, 1944. It is further contended that the petitioner is now ready and willing to pay the pre-deposit and earlier had not paid in view of the fact the Bank Accounts of the petitioner were frozen.

3.However, perusal of the order impugned would reveal that the appeal was rejected not only on the ground of non-compliance of the mandatory pre-deposit made under the provisions of the Central Excise Act, but also on the ground of delay in filing the appeal.

4.The findings in the impugned order states that "In the instant case, the Order-in-Original dated 19.12.2016 was received by the appellant on 24.12.2016. But the appellant have filed this appeal only on 22.01.2018 almost after a delay of one year and 30 days. i.e., the appeal should have been file on or before 22.02.2017. The appellant have also filed condonation of delay in filing this appeal stating that they have filed this appeal after getting approval from the higher authorities; for the reasons stated above, they have requested to condone the delay in filing the appeal. In terms of the above said provisions of law, Commissioner (Appeals) can condone the delay in filing the appeal beyond two months only for a further period of one month provided, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months i.e. in any case the appeal should be filed within three months from the date of receipt of order. In the instant case, the appeal should have been filed on or before 21.03.2017 by including the condonation period, whereas the appellant have filed this appeal only on 22.01.2018 which is beyond the period as prescribed under the provisions of Section 85(3A) of the Finance Act, 1994."

5.Thus, the order impugned was issued on the ground that the appeal was filed beyond the period of limitation and further, the petitioner has not made pre-deposit, which is mandatory for entertaining the appeal under the provisions of Central Excise Act. In this regard, the learned counsel for the petitioner states that the Writ Appeal was pending and the order was passed in W.A.No.1158 of 2018 on 17.05.2018. In view of the pendency of the Writ Appeal during the relevant point of time before the Division Bench of this Hon'ble High Court, the appeal was filed belatedly.

6.This Court is of the considered opinion that the appeal filed by the aggrieved persons have to be decided in merits on all circumstances. If the reasons stated for the delay is acceptable, then the Courts may consider the same and condone the delay by providing opportunity to the aggrieved persons and adjudicate the issues on merits and in accordance with law. In the present case, pre-deposit was not made by the petitioner, which is mandatory for entertaining the appeal under the provisions of Central Excise Act due to the fact that the Bank Accounts of the petitioner were frozen and further the appeal was filed belatedly in view of the pendency of the Writ Appeal before the Division Bench of this Hon'ble Court.

7.This being the factum established, the order impugned passed by the 1st respondent in Appeal No.145/2018-ST dated 24.08.2018 is quashed. The petitioner is directed to comply with the condition of pre-deposit as contemplated under the Central Excise Act, within a period of four weeks from the date of receipt of a copy of this order and represent the appeal to the 1st respondent. In the event of receiving the appeal complying with the provisions of the Act within the period of four weeks, the 1st respondent shall entertain the appeal and dispose of the appeal on merits and in accordance with law and by affording opportunity to all the parties concerned.

8.With these directions, the Writ Petition stands allowed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CJ-CONF)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Central Excise Appeals,
   Office of Commissioner of Central Excise,
   No.1, Foulks Compound, Anaimedu,
   Salem - 636 001.

2. The Deputy Commissioner of Central Excise,
   Service Tax Cell,
   Hosur-I Division, Thally Road,
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   Indian Bank, Kaveripattinam Branch,
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   Kaveripattinam - 635 112,
   Krishnagiri District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.39056

W.P.No.31335 of 2018

GJ(CO)
HS(26/08/2021)