05.10.2023
PB
Sl. No.7.

WPA 23005 of 2023

Orion Security Solutions Pvt. Ltd.
Vs
Senior Joint Commissioner of
Revenue, Dharmatala Circle & Ors.

Mr. J. P. Khaitan,
Mr. Rishi Raju,
Mr. Mrigank Kejriwal.
…….for the petitioner.
Mr. A. Ray,
Mr. T. M. Siddiqui,
Mr. T. Chakraborty,
Mr. S. Sanyal.
…….for the State.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned orders in original dated 12th March, 2022, and the impugned orders of the appellate authority dated 20th April, 2023, dismissing the appeals in question of the petitioner on the ground of inordinate delay of 9 months.

Mr. Khaitan, learned senior advocate representing the petitioner submits that the impugned adjudication orders were ex parte and the reason for not participating in the impugned adjudication proceeding as well as delay in filing the appeals against the impugned adjudication orders were due to lapse and laches on the part of the petitioner's tax consultant Mr. A. K. Sidhwani, who according to the petitioner failed to inform the petitioner with regard to receipt of show-cause notices which were sent to the said consultant in his mail address and the said tax consultant also miserably failed to pursue the impugned adjudication proceedings before the adjudicating authority. All these facts have been explained in details in paragraphs 8 and 9 of the writ petition which are quoted as hereunder:-

"8. Your petitioner states that on its GST portal the email id for communication of any information was that of your petitioner's tax consultant. As a result, all communications with regrd to the aforesaid demand proceedings under Section 73 of the Act were communicated to the said email id. Your petitioner submits that the consultant did not take cognizance of the purported show cause notices dated February 01, 2022, due to which your petitioner were not made aware of the same. Your petitioner states that a reminder notice was issued on March 05, 2022, which also remained unnoticed due to the inadvertent error of your petitioner's tax consultant. As a result, in absence of any response to the purported aforesaid show cause notices dated February 01, 2022, respondent no.2 passed the corresponding Orders-in-

Original dated March 12, 2022, which confirmed the entire demand of tax, penalty, late fees and interest was re-determined. Consolidated copies of the purported Orders-in-Original all dated March 12, 2022 re annexed hereto and marked as P-4.

9. Your petitioner states that the tax consultant had failed to inform your petitioner with regard to receipt of any show cause notice or the corresponding order under the provisions of Section 73 of the Act and as such your petitioner was not aware of the purported orders dated March 12, 2022 and the purported demand raised thereunder. Your petitioner states that on January 29, 2023, your petitioner's debtors where issued recovery notices in Form DRC 13 for payment of your petitioner's outstanding liability under the Act. That on the subsequent day being January 30, 2023 your petitioner was informed through his debtors of his outstanding liability vide the purported proceedings initiated under Section 73 of the Act. Your petitioner states that the previous tax consultant had lost or forgotten the login credentials of the GST portal and as such the petitioner had sought to appoint a new officer who would look after the GST related work and on January 19, 2023, the petitioner had taken steps for altering or amending the details provided in petitioner's GST portal which would enable your

petitioner to access the GST portal and ensure all compliances. Your petitioner state that as it did not have access to the portal your petitioner became aware of the purported orders dated March 12, 2022 only on January 30, 2023."

Mr. Siddiqui, learned Additional Government Pleader opposes this writ petition on the ground of inordinate delay in filing the appeal and justifying the order of the appellate authority and further submits that huge revenue is involved and the tax due amounts to about Rs.14 crores and that the petitioner is not an individual, it is a company.

Considering the facts and circumstances of the case and the specific averments made in the writ petition in paragraphs 8 and 9 of the writ petition to show bona fide of the petitioner company and in the interest of natural justice and that the impugned adjudication order was passed ex parte and that the delay in filing the appeal was also due to laches and lapse of its tax consultant which is unprofessional conduct of the tax consultant and though the assessee should also been be vigilant and diligent about its legal rights after all it is a company having service of tax professional and experts but still in the interest of justice and in view of the statement made by Mr. Khaitan, learned senior advocate representing the petitioner that petitioner is ready and willing to pay a cost of Rs.5 lakhs to the authority concerned for condonation of delay in filing the appeal before the first appellate authority, the impugned orders of the appellate authority dated 20th April, 2023 are set aside. I am also of the view that since the impugned adjudication orders were passed ex partee may be due to lapse or fault on the part of the petitioner's tax consultant, matter should be remanded back to the adjudicating authority concerned, accordingly, the impugned adjudication orders dated 12th March, 2022 are also set aside and the matters are remanded back to the adjudicating authority concerned to pass fresh adjudication orders in accordance with law and by passing a reasoned and speaking order and after giving an opportunity of hearing to the petitioner or its authorized representatives within six weeks from the date of compliance of the conditions that petitioner shall make a deposit of 20% of the disputed tax before the GST authority concerned and shall also make payment of cost of Rs.5 lakhs for condoning the delay and setting aside the impugned orders by allowing this writ petition and such payments has to be made by the petitioner within two weeks from date which petitioner has agreed in Court to pay and it shall file proof of payment of the same before the adjudicating authority concerned. This order has been passed in view of the exceptional facts and circumstances involved in this case and it should not be treated as precedent. Needless to mention that no unnecessary adjournment should be granted to the petitioner and the adjudication order shall be passed within the time stipulated herein.

With this observation and direction, this writ petition being WPA 23005 of 2023 is disposed off.

(Md. Nizamuddin, J.)