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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CEXA/9/2023
IA NO: GA/1/2023
BANKURA MUNICIPALITY
VS
COMMISSIONER OF CGST AND CX BOLPUR COMMISSIONERATE AND ORS.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13th December, 2023

<u>*Appearance*</u> :
Ms. Sukanya Dutta, Adv.
...for appellant

Mr. K.K. Maity, Adv.
...for the respondent

The Court : The appellant is the Bankura Municipality and this appeal is filed under section 35G of the Central Excise Act, 1944 [the Act] challenging the order passed by the Service Tax Appellate Tribunal, Eastern Zone Bench, Kolkata dated 19.6.2023 in appeal case no.75350 of 2023. The appellant has raised the following substantial questions of law for consideration.

"1. Whether the Hon'ble Tribunal is justified in passing the impugned order without going into the merit of the case and dismissed the appeal on the ground that the appeal filed before the Respondent no.4 beyond the period of limitation ?

2. Whether on the facts and circumstances, the Hon'ble Tribunal has ceased the right of your petitioner to get legitimate relief which involves a wide range of legal interpretations as well as involves the

same question of law for the previous and subsequent assessment years, for which the same elucidation is involved, is not beyond the principle of natural justice ?

We have heard learned advocates appearing for the respondents.

The appellant Municipality was issued a show cause notice dated 23.1.2014 calling upon them to show cause as to why service tax should not be demanded in respect of the various activities done by the Municipality in terms of Section 73[1] of Finance Act, 1994 as amended and why interest should not be charged and penalty should not be imposed. The appellant assessee had submitted their reply to the show cause which was adjudicated by the Joint Commissioner, Customs, Central Excise and Service Tax, Durgapur Commissionerate and by order dated 24.8.2016 accepted the case of the appellant Municipality partially and dropped the demand to the tune of Rs.24,85,797/-. However, by the said order the adjudicating authority confirmed the demand of service tax to the tune of Rs.18,74,912/- together with Education Cess, etc and also imposed penalty equally to the amount of service tax to the tune of Rs.19,31,159/- in terms of section 78 of the Finance Act, 1994. Penalty was also imposed for violation of section 69 read with Rule 4 of the Service Tax Rules, 1994 and separate penalty was imposed for violating the provision of section 70 of the Finance Act, 1994.

Aggrieved by such order the appellant preferred the appeal before the Commissioner [Appeals], Central Excise, Kolkata. The said appeal was dismissed not on merits but on the ground that it was time barred in terms of section 85[3A] of the Finance Act, 1994. Aggrieved by the same, the assessee appellant has preferred the appeal before the Tribunal raising various grounds on merits.

The learned Tribunal by the impugned order dated 19th June, 2023 confirmed the order of the Commissioner of Appeals who had dismissed the appeal as time barred. It is no doubt true that there is a statutory time limit prescribed under Section 85(3)(A) of the Finance Act, 1994 and beyond the said time limit the appellate authority has no discretion to condone the delay in filing the appeal. We note that the appellant is a municipality within the meaning of Municipal Act and it is treated as local authority within the meaning of Article 243P of the Constitution of India. As could be seen from the adjudication order dated 24th August, 2016, the appellant/assessee contested the show cause notice by making detailed submissions and part of the submissions made by the appellant/assessee was accepted by the adjudicating authority resulting in a dropping of the demand to the tune of Rs.24,84,797/-. However, the remaining part of the demand was confirmed by the adjudicating authority.

While preferring appeal before the Commissioner of Appeals, the appellant sought for condonation of the delay citing that due to Durgapuja vacation the municipality was unable to provide the necessary records to their authorised representative and after it was provided to the authorised representative, the said person had fallen sick and was advised bed rest and apart from that during the relevant time there was demonetisation announced by the Government of India which also caused delay.

Under normal circumstances this Court would not exercise any discretion in the matter on account of clear statutory mandate for fixing time limit for preferring an appeal before the Commissioner of Appeals. However, considering the fact that the appellant is a local authority and the issues which have been the subject matter of adjudication before the authority culminating in an order dated 24th August, 2017 are all recurring issues, the appellant, in our opinion, should be granted one opportunity to agitate their contentions so that a decision on merits is arrived at rather non-suiting the appellant municipality on a technical ground. This discretion cannot be exercised in all cases and this Court is of the view that the case on hand is a rare case where the municipality is contesting demand raised by the Service Tax Commissionerate. That apart, in all probabilities the appellant would have complied with the pre-deposit condition while preferring the appeal before the learned Tribunal. As mentioned earlier, the appellant municipality had effectively contested the show cause notice by submitting a detailed reply producing documents and also availing the opportunity of personal hearing. Therefore, it cannot be stated to be a case where the appellant municipality was not diligent of their rights nor they had failed to prosecute the matter with sincerity. Therefore, we consider the facts of the case to be very peculiar which persuades us to exercise certain discretion in the matter.

For the above reasons, the appeal is allowed and the order passed by the learned Tribunal as well as the order passed by the Commissioner of Appeals is set aside and the appeal stands restored to the file of the Commissioner of Appeals, Siliguri and the appeal be taken up after affording an opportunity of personal hearing to the authorised representative of the appellant municipality and an order be passed on merits and in accordance with law.

We make it clear that this judgment and order shall not be treated as a precedent. Consequently, the substantial questions of law are left open.

It is made clear that the appellant municipality should co-operate with the expeditious disposal of the appeal by the Commissioner of Appeals and no unnecessary adjournment should be sought for.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH/SN/S. Das