IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26820 of 2023
and
W.M.P.Nos.26246 & 26247 of 2023

Acon Builders & Promoters,
Represented by its propritrix
S.Shanmugavalli,
No.38, Rathinam Street,
Gopalapuram, Chennai – 600 086.

... Petitioner

Vs.

1.Commissioner (Appeals-I)
Office of the Commissioner of GST &
Central Excise (Appeals-I),
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.Assistant Commissioner
Office of the Assistant Commissioner
of CGST & Central Excise,
Mylapore Division Chennai North,
7th Floor, Annex Building,
No.26, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent passed in Order-in-Appeal No.239/2023 (CTA-I) dated 24.08.2023 and quash the same further direct the first respondent to admit and re-hear the appeal after granting opportunity of personal hearing and quash the same.

For Petitioner : Mr.N.Murali

For Respondents : Mr.K.Mohanamurali
Senior Panel Counsel

ORDER

Mr.K.Mohanamurali, learned Senior Panel Counsel takes notice on behalf of the respondents.

2. Heard the learned counsel for the petitioner and the learned Senior Panel Counsel for the respondents.

3. This Writ petition is filed against the impugned Order-in-Appeal No.239/2023 (CTA-I) dated 24.08.2023 passed by the first respondent Commissioner of GST & Central Excise (Appeals-I) rejecting the petitioner's

appeal against the Order-in-Original No.11/2022-ST dated 29.11.2022 passed by the second respondent.

4. The petitioner filed an appeal against the aforesaid order of the second respondent on 29.03.2023 beyond the period of 32 days after the expiry of condonable period of limitation under section 85 of the Finance Act, 1994.

5. The first respondent has rejected the appeal filed by the petitioner on account of limitation by referring to the decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, 2020 SCC Online SC 440/2020 (36) G.S.T.L. 305 (S.C.), wherein, in Paragraph 17, it has been held as under:-

> ***"15. ...., it is clear as crystal that the Constitution Bench in Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409, has rules that there is no conflict of opinion in Antulay case [A.R.Antulay v. R.S.Nayak, (1988) 2 SCC 602] or in Union Carbide Corpn. case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] with the principle set down in Prem Chand Garg v. Excise Commr., AIR 1963 SC 996. Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a***

further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corpn. case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584], As the pronouncement in Chhattisgarh SEB v. Central Electricity Regulatory Commission, (2010) 5 SCC 23, lays down quite clearly that the policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution."

6. The grievance of the petitioner is that the petitioner was out of country for period between 24.11.2022 and 26.02.2023. In other words, the specific case of the petitioner is that before the Order-in-Original No.11/2022-ST dated 29.11.2022 passed by the second respondent, the petitioner had left the Country and went to Canada and returned only on 26.02.2023 that is last date for filing the appeal with an application to condone the delay of 30 days in filing the appeal before the first respondent.

7. The order passed by the first respondent Appellant Commissioner cannot be faulted in view of the decision of the Hon'ble Supreme Court in **Glaxo Smith Kline Consumer Health Care Limited** case (referred to supra).

8. However, at the same time, it has to be considered that the petitioner was not in a position to file an appeal prior to the date as is evident from the documents filed by the petitioner indicating that the petitioner was out of country between 24.11.2022 to 26.02.2023.

9. Considering the above, this Court is inclined to set aside the impugned order and remits the case back to the first respondent to dispose the appeal on merits and in accordance with law without reference to the limitation.

10. Needless to state, the petitioner's appeal shall be disposed subject to the petitioner pre-depositing the amount as is contemplated under Section 129E of the Income Tax Act, 1961.

11. This Writ Petition is disposed of with the above observations. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

13.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

nsl/arb

To

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C.SARAVANAN, J.

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