



W.P.No.11898 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 04.06.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

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M/s.Vision Holidays
Rep. by its Managing Partner Mr.S.R.Bhoopathy
No.354-C, Sudheera Complex,
100 Feet Road,
Coimbatore - 641 012.

... Petitioner

-VS-

1.The Customs Excise and Service Tax
Appellate Tribunal, South Zonal Bench,
Shastri Bhawan Annexe,
1st Floor, 26, Haddows Road,
Chennai - 600 006 (Represented by its Assistant Registrar)

2.The Commissioner of GST & Central Excise,
No.6/7, A.T.D. Street, GST Bhavan,
Race Course Road,
Coimbatore - 641 018.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order passed by the 1st respondent vide his order in Defect Dairy No.41278/2023 dated 09.02.2023 and quash the same as it is Arbitrary, illegal and in gross violation of Principles of Natural Justice and further direct the 1st respondent to take up the appeal on file and to dispose of the same on its merits in accordance with law.

For Petitioner : Mr.A.Satheesh Murugan

For Respondents : Mr.K.Mohanamurali, Sr. SC

ORDER

An order of the Customs Excise and Service Tax Appellate Tribunal, Chennai rejecting an application by the petitioner for condonation of delay is challenged in this writ petition.



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2. An appellate order was issued on 23.02.2016. As per Section 86 of the Finance Act, 1994, the appeal should have been filed within two months from the date of receipt of the order. Consequently, in this case, the appeal should have been filed on or before 23.05.2016. The petitioner presented the appeal before the CESTAT on 13.11.2023 along with an application to condone the delay of 2727 days. Since such application was rejected, the present writ petition was filed.

3. Learned counsel for the petitioner submits that the impugned order of CESTAT is liable to be interfered with because the tribunal disregarded the explanation of the petitioner that the Managing Partner, Mr.S.R.Bhoopathy, was suffering from chronic disc prolapse and was under treatment from 2016. In support of the contention that the expression sufficient cause should be construed liberally, he places reliance on the judgment of the Division Bench of this Court in *Tojo Tyre Retread v. CESTAT, Chennai 2015(317) E.L.T. 448 (Mad.)* and



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the judgment of the single judge of this Court in *Kone Elevator India Pvt. Ltd. v. Secretary Ministry of Finance* 2013(32) S.T.R. 262 (Mad.). He also relied on a judgment of the Division Bench of the Bombay High Court in *Manish Vorani v. Union of India* 2015(316) E.L.T. 575 (Bom.).

4. Mr.K.Mohanamurali, learned senior standing counsel, accepts notice for the respondents. He points out that the petitioner failed to show sufficient cause and that the period of delay is 2727 days.

5. The question that arises for consideration is whether a case is made out to interfere with the impugned order. In the impugned order, the CESTAT took into consideration the petitioner's pleading that he was seriously ill between March 2016 and October 2023. CESTAT also took into account the submission that there was a lockdown between March 2020 and February 2022 on account of the Covid-19 pandemic. After advertng to judgments of the Supreme



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Court in *Mohan Lal Sharma v. Union of India and another* AIR 1981 1346

and *Smt.J.Yashoda v. Smt.K.Shobha Rani* AIR 2007 SC 1721, the

Supreme Court concluded that the evidence provided by the petitioner did not qualify a sufficient cause to explain the considerable delay in filing the appeal.

6. The reasons stated by the petitioner are that he was suffering from chronic disc prolapse at the L4 – L5 level, i.e., Sciatica. With regard to the medical certificate produced by the petitioner in that regard, CESTAT recorded the conclusion that the certificate merely states that the petitioner was under treatment from 2016 and not that he was unable to undertake day to day affairs during the said period. Based on the reasons stated by the petitioner and the evidence submitted in support thereof, in my view, the conclusion of CESTAT in this regard cannot be faulted. Consequently, no case is made out for interference.



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7. Therefore, W.P.No.11898 of 2024 is dismissed without any order as to costs.

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

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