BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.16215 of 2024
and
W.M.P.(MD) Nos.14104 and 14105 of 2024

M/S.Sabeetha Roofing India Private Limited,
represented by its Managing Director,
B.Kesava Pillai. ... Petitioner

/vs./

1.The Commissioner of GST and Central Excise (Appeals),
Coimbatore, Circuit Bench at Madurai,
No.4, Lal Bahadur Sasthri Road,
GST Bhawan,
Bibikulam, Madurai 625 002.

2.The Deputy Commissioner of GST & Central Excise,
Tirunelveli Division,
Tractor Road,
NGO A Colony,
Tirunelveli 627 007. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records on the file of the 1st respondent in Order in Appeal No.02/2024-MDU-CE-APP dated 29.02.2024 confirming the assessment order passed by the 2nd respondent in Order in Original no. 01/CE/DC/2021 dated 22.03.2021 and to quash the both as cryptic, illegal, arbitrary, wholly without justification.

For Petitioner : Mr.N.Sudalai Muthu

For Respondents : Mr.R.Nanda Kumar
Senior Standing Counsel

ORDER

The petitioner is before this Court against the impugned order in Appeal No.02/2024-MDU-CE-APP dated 29.02.2024 passed by the first respondent/the appellate Commissioner.

2.By the impugned order, the appeal filed by the petitioner under Section 85 of the Finance Act, 1994, against the Order in Original No.01/CE/DC/2021 dated 22.03.2021 has been rejected on the ground of limitation. Operative portion of the impugned order reads as under:

> 10. In this case, the Appellant has received the impugned Order on 26.03.2021. The time limit for filing appeals ends on 25.05.2021. In this connection, the Hon'ble Supreme Court has ordered vide order dated.10.01.2022 in Miscellaneous Application No.665 of 2021 in Suo motu Writ Petition (C) of 3 of

2020 that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Accordingly, the period from 15.03.2020 till 28.02.2022 stands excluded for the purpose of limitation in this appeal. The order further said that in case where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. Thus, as per the order of the Hon'ble Supreme Court, the time limit for filing appeals ends on 29.05.2022. However, the present appeal has been filed only on 16.09.2022. Hence, the appeal filed by the Appellant on 13.10.2023 is delayed by 110 days.

21. In the case of Singh enterprises Vs. Commissioner of C.Ex., Jamshedpur [2008 (221) E.L.T. 163 (S.C)], the Hon'ble Supreme Court held,

"8 The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court

were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

12. Relying on the above case, the Hon'ble Tribunal in the case of Zenith Rubber Pvt Ltd Vs. Commissioner of C.Ex. & S.T., Ahmedabad [2017 (49) S.T.R. 400 (Tri. – Ahmd.) held that

> *"5. It is clear from the above provisions of Section 85(3A) of the Finance Act, 1994 that Commissioner (Appeals) is empowered to condone the delay for a further period of one month. The Hon'ble Supreme Court in the case of Singh Enterprises (supra) held that Commissioner (Appeals) has no power to condone the delay beyond the prescribed period. In our considered view, Commissioner (Appeals) rightly rejected the appeal following the statutory provisions of the Act. So, we do not find any reasons to interfere in the impugned order. Accordingly, we reject the appeal filed by the appellant. Stay petition is disposed of."*

13. In this case, the said appeal has been filed beyond the time limit prescribed in the statue and it also exceeds the condonation period stipulated therein. The Appellant has not fulfilled the conditions of limitation as stipulated under Section 35 of the Central Excise Act. Hence, the appeal is liable to be rejected on the grounds of limitation, without going into the merits of the appeals.

3.The learned counsel for the petitioner submits that there is a partial delay in filing the appeal, as the limitation that was extended by the Hon'ble Supreme Court pursuant to series of directions has also expired. It is submitted that the petitioner could not file a statutory appeal in time, as the petitioner's operation had completely come to a stand still. It is submitted that only after the operations were restored, the petitioner could file an appeal on 16.09.2022, which has now culminated in the impugned order.

4.The learned counsel for the petitioner has relied on the series of following decisions:

> *"i) in* ***S.Brithivirajan Vs. Joint Commissioner*** *reported in* ***(2024) 161 taxmann. Com 742 (Madras)***
> *ii) In* ***Bhole Baba Milk Food Industries Ltd., Vs. Union of India*** *reported in* ***(2024) 161 taxmann.com 755 (Allahabad)"***

5.The writ petition is opposed by the learned Senior Standing Counsel for the respondents on the ground that the writ petition is devoid of merits. It is submitted that despite the delay has been condoned by the Hon'ble Supreme Court after the outbreak of COVID 19 pandemic, the petitioner failed to availed the opportunity and therefore the writ petition challenging the impugned order is liable to be dismissed.

6.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

7.The order passed by the first respondent cannot be found fault with, as the appellate Commissioner is duty bound by the period of limitation under the Finance Act, 1994. The appeal has been dismissed strictly in accordance with the provisions of the Act. The petitioner however appears to have a case on merits.

8.That apart, the Court can take a judicial notice of the difficulties, which the assesses would have faced due to the outbreak of COVID-19 pandemic and the large scale disruption of social and economic activity of the citizens.

9.The petitioner would not gain anything by filing an appeal belatedly. The petitioner claims to have deposited Rs.61,428/-, which is approximately 20% of the total amount covered by the impugned Order in Original No.01/CE/DC/2021 dated 22.03.2021 before the first respondent for a sum of Rs.4,20,766/-. The petitioner has not disputed the amount of Rs.40,100/- towards late payment of charges.

10.Since the petitioner may have a case, this Court is inclined to rescue the petitioner subject to the petitioner depositing another 20% of the disputed tax to the credit of the Government within a period of 30 days from the date of receipt of a copy of this order. Subject to the petitioner depositing another 20% of the disputed tax in cash, the first respondent shall consider the petitioner's appeal and dispose of the same on merits and in accordance with law.

11.The Writ Petition stands disposed of, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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22.07.2024

C.SARAVANAN, J.

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