BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.08.2024**

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD) No.18717 of 2024

N.Manimaran ... Petitioner

Vs.

1.The Assistant Commissioner of GST and Central Excise,
O/o.the Assistant Commissioner of GST and Central Excise,
Pon Nagar,
Medical College Road,
Thanjavur.

2.The Commissioner of Customs & Central Excise (Appeals),
O/o. the Commissioner of Customs & Central Excise,
No.1, Williams Road, Cantonment,
Tiruchirappalli – 620 001. ... Respondent

(R2 is *suo motu* impleaded *vide* order dated 05.08.2024
in W.P.(MD)No.18717 of 2024)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records relating to the impugned order of the respondent in File No.GEXCOM/ADJN/ST/3385/2022-CGST-DIV/TNJ dated 13.12.2022 and quash the same.

For petitioner : Mr.M.Nedunchezhian
For respondents : Mr.R.Gowri Shankar
Senior Standing Counsel

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ORDER

This Writ Petition is filed challenging the impugned order dated 13.12.2022 on the premise that the first respondent has passed the impugned order levying tax on the construction of residential building, which, according to the petitioner, is exempted from service tax. Thus, any levy of tax would fall foul under Article 265 of the Constitution of India.

2. It is submitted by the learned counsel for the petitioner that the petitioner was unable to file an appeal against the impugned order dated 13.12.2022 within the prescribed period, due to Covid-19 pandemic, several staff abandoned their job and hence, the petitioner was short of hands and was unable to file the Appeal in time.

3. It is further submitted that despite the difficulties faced due to the pandemic, the petitioner attended the personal hearing and put forth his submission before the first respondent.

4. To the contrary, the learned Senior Standing Counsel for the respondents would submit that since the petitioner failed to file the Appeal within the stipulated time, the petitioner does not have any right whatsoever to maintain the present Writ Petition.

5. The learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of ***M/s.K.Balakrishnan, Balu Cables vs. O/o. the Assistant Commissioner of GST & Central Excise in W.P.(MD)No. 11924 of 2024 dated 10.06.2024,*** wherein, this Court was pleased to permit the petitioner to file statutory appeal, though the limitation period prescribed for filing an appeal in terms of Section 107, had expired prior to filing of the Writ Petition, subject to the condition that the petitioner depositing 25% of the disputed tax amount. The relevant portion of the order is extracted hereunder:

> *"6. Having considered the submissions made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent and the notification No.8/2008-ST, dated 01.03.2008 as amending notification No.6/2005 dated 01.03.2005 and also considering the fact that the petitioner is a small entity engaged in cable network connection, this Court is of the view that the petitioner may have the case on merits and therefore, a liberty can be given to the petitioner to file statutory appeal.*

> *7. Recording the above submissions of the learned counsel for the petitioner, this Writ Petition is disposed of by permitting the petitioner to file statutory appeal before the Appellate Commissioner within 30 days from the date of receipt of a copy of this order together with the deposit of 25% of the disputed amount, as a condition for entertaining the appeal.*
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> *8. Needless to state, the above amount is without prejudice to the rights of the petitioner in the appeal. The petitioner shall be heard before the appeal is disposed of on merits and in accordance with law."*

6. It is submitted by the learned counsel for the petitioner that levy of tax on a exempted activity would fall foul of Article 265 of the Constitution of India and would thus request that the petitioner may be permitted to file an appeal. It is further submitted that the petitioner is ready and willing to make deposit 25% of the disputed tax, as a condition for entertaining the appeal.

7. Under these circumstances, the Appellate Authority namely, The Commissioner of Customs and Central Excise (Appeals), O/o. the Commissioner of Customs and Central Excise, No.1, Williams Road, Cantonment, Tiruchirappalli is *suo motu* impleaded as the second respondent in the Writ Petition.

8. Recording the above submission of the learned counsel for the petitioner and following the earlier order of this Court in the case of ***M/s.K.Balakrishnan, Balu Cables'***s case (cited supra), this Court is inclined to permit the petitioner to file statutory appeal before the Appellate Authority/second respondent together with the deposit of 25% of the disputed tax, within a period of four weeks from the date of receipt of a copy of this order. On compliance of such condition, the Appellate Authority/second respondent shall entertain the appeal by admitting the same without reference to the period of limitation and pass orders in accordance with law after affording reasonable opportunity of hearing to the petitioner.

9. With the above direction, this Writ Petition is disposed of. No costs.

05.08.2024

Index : Yes / No
Internet : Yes / No
apd

To
1.The Assistant Commissioner of GST and Central Excise,
O/o.the Assistant Commissioner of GST and Central Excise,
Pon Nagar,
Medical College Road,
Thanjavur.

2.The Commissioner of Customs & Central Excise (Appeals),
O/o. the Commissioner of Customs & Central Excise,
No.1, Williams Road, Cantonment,
Tiruchirappalli – 620 001.

<u>MOHAMMED SHAFFIQ, J.</u>

apd

W.P.(MD) No.18717 of 2024

05.08.2024