(2013) 12 KL CK 0029

In the High Court Of Kerala

Case No : W.P. (C) No. 29723 of 2013(M)

B. Sasikumar APPELLANT

Vs

Commr. of C. Ex., Cus. and Service Tax (Appeals) RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2014) 304 ELT 32

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Judgement

V. Chitambaresh, J.—Section 85(3) of the Finance Act, 1994 provides a period of two months for an appeal to be filed against an order of adjudication relating to service tax, interest or penalty. Any delay in the appeal filed within a period of one month after the expiry of two months aforesaid can of course be condoned. The petitioner in the instant case has filed the appeal after three months and 23 days which is beyond the condonable period. But Ext. P1 order saddling him with the liability to pay service tax erroneously states that an appeal can be preferred within a period of three months from the date of receipt of the order. The petitioner contends that he was guided by the said statement in Ext. P1 order and that was why he preferred an appeal within the condonable period of one month after the said period of three months. I feel that the petitioner should not suffer due to a fault on the part of the adjudicating authority even though Ext. P2 order of the first respondent is well founded on the basis of the statutory provisions.

2. I quash Ext. P2 order in the peculiar facts and circumstances of this case and this judgment shall not be treated as a precedent at all. The first respondent is directed to hear the appeal on merits since the explanation offered by the petitioner for the delay of 23 days is accepted by me. The petitioner points out that the delay was not willful and that it occurred due to the difficulty in collecting the necessary records for preparing and filing the appeal.

3. The first respondent shall pass final orders in the appeal against Ext. P1 order

within a period of four months. The petitioner shall produce a copy of the writ petition with the judgment before the first respondent for compliance. The writ petition is disposed of.

